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The Board of (Railway Commissioners for Canada)

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OF

JUDGMENTS, ORDERS, REGULATIONS AND RULINGS OF THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA

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Judgments, Orders, Regulations, and Rulings

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(Translation.)

Application of the town of St. Laurent for an order directing the Canadian National Railways to erect a station at St. Mathieu street, within the limits of the town.

File No. 28984.

The DEPUTY CHIEF COMMISSIONER:

The Canadian Northern, now forming part of the Canadian National Railways, is asked by this application to erect a station both for passenger and freight traffic at the highway crossing of Cote-Ste. Marguerite, otherwise known as "Vertu Road," within the limits of the town of St. Laurent.

The railway objects to the application made by the town of St. Laurent, stating that this locality is well taken care of, as regards passenger service, by the Montreal Park and Island Electric Railway Company and, as regards freight traffic, by the Grand Trunk Railway. The company further states that its station at Lazard being only two miles distant from St. Laurent, the people can easily go there to take the train for Montreal. It also states that its station at "Model City," one and a half miles distant, will in due course of time be connected with good roads, thus permitting the people of St. Laurent to use the railway at that point.

This matter was heard at Montreal on the 16th January last, and our Inspector's report is now before us.

As in several other cases where the Canadian Northern is concerned, the question here is as to the kind of facilities that should be given the various towns already existing in this portion of the island of Montreal.

As to its service on this portion of its railway, the Canadian Northern appears to have drawn up its plans, more or less, in connection with certain companies dealing in building lots, where as yet nobody lives. Stations have been erected at certain points where, for the present, there is no need of a railway. On the other hand, localities established a long time ago, anxious to use the railway within their limits, appear to have been forgotten.

The railway company foresees that considerable suburban traffic will obtain on this portion of its line, and that it will have to build several stations in the near future. Well and good for the future, but as to the present needs, nothing appears to have been done.

As I stated in another case where Cartierville is concerned, the Canadian National Railways should have a station at each and every village along its line, starting from the Mont Royal Tunnel to the terminus of its suburban service.

The town of St. Laurent, through which the Canadian National Railways pass, between Mont Royal and Lazard, has existed for over a century. It has a population of over 4,000, and its industries are sufficiently developed to warrant a station. Its needs as to freight traffic not being so well established, and in view of the consent of the

company, referred to in Mr. Spencer's report of February 21, I think it is sufficient for the present to order the erection of a station at the point shown on the plan filed by the engineers of the town of St. Laurent, bearing date the 14th January, 1919, where all suburban and local trains now running and to run in the future between Montreal and Lazard, should stop. The plan of the station to be erected is to be submitted to the Board, and the work completed within thirty days.

Later on we may have occasion to consider the question of giving freight facilities to the people of St. Laurent.

OTTAWA, February 28, 1919.

The Chief Commissioner concurred.

COMMISSIONER McLEAN:

I agree in the opinion as expressed and the disposition as recommended as to the specific case herein concerned.

Application on behalf of the Central Railway Company of Canada for a recommendation to the Governor in Council for sanction of agreements between the Central Railway Company of Canada and the Central Counties, the Ottawa Valley, the Ottawa River Valley, the Carillon and Grenville, St. Agathe Branch, and the Ottawa River Navigation Railway Companies.

File 534.12.

Heard at Ottawa, March 4, 1919.

JUDGMENT.

Mr. COMMISSIONER BOYCE:

The Board is asked, under section 361 of the Railway Act, to recommend for the sanction of the Governor in Council, the following agreements between the Central Railway Company of Canada, and,—

1. The Ottawa Valley Railway Company, dated 18th October, 1911;
2. The Central Counties Railway Company, dated 17th October, 1911;
3. The Carillon and Grenville Railway Company, dated 18th October, 1911;
4. The Ottawa River Railway Company, dated 17th October, 1911; and,
5. The Ottawa River Navigation Company, dated 7th September, 1911,

which purport, for the considerations and upon the terms in the agreements expressed, to sell, transfer, and convey to the Central Railway, all the railway assets, franchises and stock of the vendor companies, respectively.

As regards the agreement between the Ottawa River Navigation Company and the Central Railway Company, the Board, when these applications were first mentioned, took the position that it had no jurisdiction to deal, in any way, with any application concerning this company as it is purely a navigation company of local status and did not fall within any jurisdiction conferred upon the Board under the Railway Act, and the receiver was notified of this ruling November 12, 1918.

As far back as the 14th April, 1916, there was an intimation to the Board that these applications would be made, but the application was not completed for submission to this Board until 11th January, 1919, when the applicants submitted proof of public advertisements, prerequisite to the hearing of the application.

The agreements which the Board is asked to recommend for approval to the Governor in Council involve mutual covenants, i.e., covenants on behalf of the vendor railway companies, and covenants on behalf of the Central Railway Company of

Canada; the former covenants applying to matters of title, and the covenants on behalf of the Central Railway Company, then solvent, as to the payment of all debts, liabilities, obligations, contracts, and duties of the vendor company which the purchasing company, by the agreements, covenanted to assume, discharge, and indemnify the vendor company from and against.

By the time that the application was completed and ready for hearing, by this Board, for recommendation of approval of the agreements for sanction by the Governor in Council, the position of the affairs of the Central Railway Company of Canada had materially changed since the agreements sought to be sanctioned were made, as appears by the following incidents in evidence:—

(a) By trust deed, dated 5th May, 1914, the Central Railway Company of Canada executed a mortgage to the City Safe Deposit and Agency Company, of London, England, upon all the property of the company, including that of the several company vendors in the unsanctioned agreements, for the purpose of securing a bond issue of the Central Railway Company of Canada, for an amount not exceeding £2,600,000.

(b) On the 3rd May, 1916, the Central Railway Company filed in the Exchequer Court of Canada, a scheme of arrangement, under section 365, et seq., of the Railway Act, with a declaration of that company's inability to meet its engagements with its creditors, thereby admitting its insolvency.

(c) By Order of the Exchequer Court of Canada, dated 6th December, 1917, Mr. F. Stuart Wilkinson, of Montreal, was appointed, under the Exchequer Court Act, as receiver of that company.

(d) By Order of the Exchequer Court of Canada, dated 9th October, 1918, sale of the assets of the Central Railway Company of Canada, including all the right, title, and interest of that company in the (so-called) subsidiary company, vendors in the agreements now sought to be sanctioned, was directed, and, *inter alia*, judgment was given in favour of the City Safe Deposit and Agency Company, at whose suit the action was brought, against the Central Railway Company of Canada, for the amount of the claim of the bond holders, and directing a reference to ascertain the amount of such claim; and,

(e) At the suit of the Imperial Bank of Canada, a judgment was rendered, dated 13th March, 1918, by the Superior Court of the province of Quebec, against the Ottawa River Navigation Company, for \$3,432.72 and interest and costs.

It will, therefore, be seen that, since the agreements now sought to be sanctioned were made in 1911, and during the time that the Central Railway Company was preparing to make application to this Board for recommendation as to the sanction of the said agreements under the Railway Act, the Central Railway Company of Canada became hopelessly insolvent, absolutely unable to carry on its business, was not operating any railway, and does not now operate any railway, and became, admittedly, quite unable to perform the covenants on its part in the agreements with the different railway companies, which are now sought to be ratified.

If the applicants were to be allowed to succeed in this application, the effect would be that the Board would recommend to the Governor in Council for solemn sanction and validation, under the Railway Act of Canada, the agreements mentioned in the face of specific evidence submitted, showing:—

(a) That the consideration in the said agreements has never been paid;

(b) The covenants on the part of the purchasing company have never been performed;

(c) That hopeless insolvency of the purchasing company renders impossible both payment of purchase money, and performance of the conditions of the agreements by the purchasing company;

(d) That the Ottawa Valley Railway Company had notified the Board on the 24th April, 1918, that the agreement between that company and the Central Railway Company of Canada had been cancelled and annulled;

(e) That creditors of one of the vendor companies, e.g., the Imperial Bank of Canada, object to the ratification of the agreements, which would involve the exclusion of the rights of the creditors to recovery of their claims against the said vendor company; and,

(f) There is no existing operating railway involved, nor is there likely to be; and, the object of the application merely is, to obtain sanction to validate the Order of the Exchequer Court, providing for the sale of all the assets, franchises, and holdings of all the companies involved, under the liquidation proceedings pending in the Exchequer Court in connection with the affairs of the Central Railway Company, providing for the sale of all the assets of the vendor companies, as the assets of the bankrupt Central Railway Company of Canada. The effect of this would be that these vendor companies, if these agreements were to be validated, would, under the order of sale to the Exchequer Court, in the liquidation proceedings against the Central Railway Company above referred to, be deprived of their assets and holdings, without having received any consideration for the sale of the same under the agreements in question.

I am firmly of the opinion that not only has the applicant failed to make out a case for interference by this Board, but that, were this Board to make such a recommendation as is sought, such action would be manifestly against public interest and contrary to the spirit, if not the letter, of the sections of the Railway Act which bestow upon the Board the duty of examining, approving, and recommending agreements of this class for ratification, before the same are allowed to be effective. In *Hodges on Railways*, 7th Edition, at p. 527, it is said that the Railway Commissioners of England considered their duties in regard to the approval of working agreements as being:—

1. To ascertain that the companies have the power to enter into the agreement submitted for approval.

2. To ascertain whether, if entered into, such agreements will be advantageous to the interests of the public; and,

3. To ascertain that their own powers are not affected by the proposed agreement.

As regards the powers of the various companies to enter into the agreements, no question arises except with reference to the Navigation Company, of which I have spoken, and with respect to which the application was practically abandoned. The companies concerned possess the statutory power, and it is alleged, as appears from the agreements, and is not disputed, that the necessary formalities as to consent were duly observed. It must be, however, patent, that no public interest is to be served by granting the application and recommending these agreements for sanction, but on the contrary, in my opinion, it would be entirely contrary to public interest to recommend for sanction, agreements, the effect of which would be to deprive the vendor railway companies of all their property and franchises without compensation.

It was urged at the hearing that, the position of the bondholders of the Central Railway Company was one of great hardship, inasmuch as they had, in good faith, advanced their money, to a large amount, upon the security of the bond issue and upon the faith of the agreements, and that if the agreements are not sanctioned the bond holders will lose the greater part, if not all, of their security. The answer to that is palpable. The trustee for the bond holders is primarily responsible for the exercise of due care and diligence in seeing to it that his title is absolute before accepting the trust, and with the bond holders themselves, the maxim *caveat emptor* applies. Before the bonds were marketed, the Act should have been complied with. Before the bonds were bought it should have been ascertained by the purchasers that the Act had been complied with.

The laches of the Central Railway Company of Canada in making no application to this Board, in conformity with section 361 of the Railway Act until after insolvency had taken place, are alone, the reason made apparent to the Board for the lamentable position in which the bond holders are left. There can be no possible object in recom-

mending ratification of the agreement, under the sections invoked, as those sections evidently contemplate an existing, if not an operating (certainly not a "paper") railway; and, it is equally clear that there are no equities in favour of the bond holders, even if this Board had jurisdiction to extend them, and they cannot complain, or take advantage of their own laches in making certain as to their title to that part of the assets covered by the bond mortgage, which purported to come to the trustee under the unsanctioned agreements.

Again, it was shown at the hearing that, before coming to this Board at all, three successive applications by Private Bill had been made by the Central Railway Company of Canada, to the Parliament of Canada, in the years 1912, 1913, and 1914, for sanction of these same agreements, and on each occasion, after due consideration by committees of Parliament, that sanction, for sufficient reasons, involving doubtless many of the above, had been refused by Parliament. It is not unreasonable to say that as Parliament (to which this Board is subject) had on three successive occasions refused its sanction to these agreements, that that fact alone is a strong ground for this Board also refusing to recommend to the Governor in Council the sanction of the same agreements by Order in Council. In effect recommending that to be done by Order in Council which Parliament had thrice refused. I feel quite sure that such a recommendation, if made, would be futile.

Even if the reasons above mentioned for refusing this application did not exist, or could in some way (at present not presented to me) be satisfactorily disposed of, so that the way had been clear for the recommendation of the agreements for sanction, I am of the opinion that this Board is without jurisdiction to make such an order or recommendation and thereby validate or recommend for validation, *ex post facto*, the agreements as of the time that they were entered into. There is no power in this Board, as I understand it, to make such an order or recommendation, which would necessarily be for sanction of the agreements *nunc pro tunc*. I think that this principle has been laid down more than once by this Board. I refer to the decision of a former Chief Commissioner (Hon. A. G. Blair) in *Niagara, St. Catharines and Toronto Ry. Co. vs. Grand Trunk Railway Company*, 3 C.R.C., at p. 267.

Even if this Board had jurisdiction to make such an order, I think it is clear that this is not a case in which such power should be exercised.

There can be no order made, as asked, and the application must be dismissed.

OTTAWA, March 11, 1919.

The Deputy Chief Commissioner and Commissioner Goodeve concurred.

ORDER No. 28167.

In the matter of the application on behalf of the Central Railway Company of Canada, hereinafter called the "applicant company," for a recommendation by the Board to the Governor in Council for sanction of agreements made between the applicant company and the Central Counties, the Ottawa Valley, the Ottawa River, the Carillon and Grenville, and the Ste. Agathe Branch Railway Companies, and the Ottawa River Navigation Company, on file with the Board under file No. 534.12.

MONDAY, the 17th day of March, A.D. 1919.

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, the 4th day of March, 1919, in the presence of counsel and representatives for the applicant

company, counsel for the Imperial Bank of Canada, and other creditors, and what was alleged,—

It is ordered: That the application be, and it is hereby, dismissed.

H. L. DRAYTON,
Chief Commissioner.

Application of the residents of Portland for an Order directing the Canadian National Railways to stop trains Nos. 5 and 6 regularly at Portland, in order to give Portland direct connection with Ottawa and Toronto, which service was in effect prior to November, 1918.

File No. 28983.

JUDGMENT.

The CHIEF COMMISSIONER:

The application of Portland is supported by the Post Office Department, which states that in order to serve Portland district properly with mail these trains ought to be stopped regularly at Portland.

The Canadian National System, of course, is entitled to run through trains. Through trains are absolutely impossible if stops are to be made at every point on the line. The first service put in by the system was in fact a local service. The time was slow; trains could not reasonably compete for the through business; and travellers between the more important centres, which constitute as a rule the more important part of the traffic, were delayed and inconvenienced. The Canadian National Railways have, therefore, changed the character of the trains. They are now running locals between Brockville and Ottawa on the eastern part of the line, for the purpose of taking care of the business in smaller places. For a like purpose, locals have been put on between Napanee and Toronto.

Portland is served by the local service between Ottawa and Brockville. This service, however, does not permit proper mail deliveries to be made. To illustrate: A letter posted on a Monday in Ottawa would be received in Portland on Tuesday. An answer mailed on the same day would not leave Portland until Wednesday at 8.55 in the morning.

It can, of course, well be said that this mail service is quite as good, if not better, than the mail service to many small points of the country. Portland, however, is an important point. It is the gateway to the Rideau lakes, and from it to a large extent is distributed the mail for that district.

The submission of the Deputy Postmaster General is as follows:—

“I enclose herewith a petition signed by the residents of Portland, Ont., asking that the Canadian National Railways be instructed to stop their trains 5 and 6 regularly at Portland, in order to give Portland direct connection with Ottawa and Toronto, which service was in effect prior to November last.

“Under the service formerly in effect in connection with trains 5 and 6 mail for Portland was made up at Ottawa and despatched by train 5 leaving Ottawa 1 p.m., due Portland 2.25 p.m. Mail was despatched from Portland by the same train due Toronto 9.45 p.m.

“Return mail was despatched from Toronto by train 6, due Portland 4.37 p.m., Portland despatching mail by the same train due Ottawa 7.10 p.m.

“Under the present arrangement direct connection between Portland, Ottawa, and Toronto is cut off, and so far as the mail service is concerned mails are received and despatched via trains 30 and 31 operating between Ottawa and Brockville, mail being despatched from Portland to Brockville by train 31 passing Portland 7.17 p.m., due Brockville 9.30 p.m.

"Brockville despatches return mail by train leaving there at 7 a.m., due Portland 8.55 a.m.

"The petitioners are not satisfied with the present service, and the department agrees with their views, and would ask that the necessary action be taken to meet their wishes and have the former service reverted to."

It should also be noted that, as matters now stand, these trains stop from time to time at Portland. The system's time-table calls for a stop at Portland, when running east, for all passengers desiring to leave Portland for any point east of Hurdman, a station which is only 2.3 miles past Ottawa.

Of course, it must in fairness be said that the great bulk of the business moving from Portland east is probably Ottawa business. Then, on the western movement, trains also stop for passengers for Sydenham and points west. Sydenham is a station only some thirty miles west of Portland, while Ottawa is some fifty-eight miles east.

The case is a special one, and under all the circumstances I would order the trains to stop as asked.

Commissioners McLean, Goodeve and Boyce concurred.

March 13, 1919.

Application of the Board of Trade of Mission City, B.C., for an order requiring the installation of protection in the form of a bell, or arms, at Horne Avenue Crossing, Mission City.

File No. 15725.

The CHIEF COMMISSIONER:

This application was heard at the Board's sittings held in Vancouver on Friday, the 14th day of February, 1919. Further evidence was given by the Honourable the Premier of British Columbia at the Board's sittings held at Victoria on Monday, February 17.

The evidence of the Honourable the Premier was directed to the existence of a trail leading across what is now the railway company's right of way before the railway was constructed.

The railway traffic is comparatively heavy, and in addition to the regular traffic a certain amount of shunting takes place.

Horne avenue forms the access to the ferry service between Mission and Matsqui. Ferry returns show the following movements for the summer months of 1918:—

Month.	Automobiles.	Passengers.	Single Rigs.	Double Rigs.
May.	1,220	4,436	599	155
June.	1,427	4,810	541	163
July.	1,555	5,618	113	163
August.	1,547	5,455	717	174

Apart from these considerations the crossing is not one to be desired. The view from the north is short. From the centre of Horne avenue, at a point fifty feet from the most northerly track, an approaching train can be seen a distance of only some 175 feet, and from the west a distance of some 220 feet. The view from the south is more satisfactory. In addition to this Horne avenue approaches the railway track on a down grade.

At Mission Junction, in which Horne avenue is situate, trains from the Sumas branch, in going to the station, approaching from the south, cross Horne avenue and back across to the station. Trains for Sumas leaving the junction back out of the station across Horne avenue and then proceed down the Sumas branch, entailing, of course, a second crossing of Horne avenue.

Horne avenue is crossed by the double tracks of the company, over which is carried the whole of its Vancouver business, and also by a passing track to the north. The main line tracks are used for the Sumas trains.

I am of the opinion that some better protection must be given. Automatic alarms should be installed. Owing to the fact that on the passing track trains are cut and then left standing, still further obscuring the view and at the same time deadening the sound of bells, and bearing in mind that with the double tracks trains may be operating in both directions, I am of the opinion that bells should be installed on both sides of the crossing, so that no one approaching it can fail to hear the warning.

I do not deal with the question of seniority at this crossing at all, because it is not the practice of the Board in connection with the comparatively small cost that the installation of an electric bell entails, to impose any part of the cost on the local authority.

The bells will be erected, bonded, and operated at the expense of the Canadian Pacific Railway Company, but the usual contribution will be made out of "The Railway Grade Crossing Fund" in ease of the company's expense.

In order to get any proper results from the bells, they will be bonded only to the main line tracks. It therefore becomes necessary to protect the public against switching and other movements on the passing track. I would order that all movements on the passing track be flagged across Horne avenue.

Commissioner Rutherford concurred.

March 13, 1919.

ORDER No. 28172.

In the matter of the application of the Board of Trade of Mission City, in the province of British Columbia, hereinafter called the "applicant," for an order directing the Canadian Pacific Railway Company to provide additional protection in the form of a bell or arms at the crossing of Horne avenue by the Canadian Pacific Railway in the said city.

File No. 15725.

TUESDAY, the 18th day of March, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

J. G. RUTHERFORD, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Vancouver on the 14th day of February, 1919, in the presence of counsel for the Canadian Pacific Railway Company, the applicant and the Government of the province of British Columbia being represented at the hearing, and what was alleged; and upon reading the further written submissions filed and the report and recommendation of an Engineer of the Board and its Chief Operating Officer,—

It is ordered: That, within sixty days from the date of this order, the Canadian Pacific Railway Company be, and it is hereby, directed to install an improved type of automatic bell on each side of the said crossing, in accordance with the "Standard Specifications for Highway Crossing Signals," approved under General Order No. 96, and thereafter maintain the said bells at its own expense; the bells to be bonded to the main line tracks only, and a detail plan showing the layout thereof to be submitted

for the approval of an Engineer of the Board; 20 per cent of the cost of installing the said bells to be paid out of the "Railway Grade Crossing Fund," and the remainder to be paid by the Canadian Pacific Railway Company.

2. That all movements on the passing track be flagged over the said crossing.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28154.

In the matter of the application of the Canadian Pacific Railway Company, herein-after called the "applicant company," for authority to remove its regular agent at Sidewood Station, in the province of Saskatchewan.

File No. 4205.175.

WEDNESDAY, the 12th day of March, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application, and upon the report and recommendation of an Inspector of the Board, concurred in by its Chief Operating officer,—

It is ordered: That the applicant company be, and it is hereby granted leave, pending further order, to remove its regular agent at Sidewood station, in the province of Saskatchewan, subject to and upon the condition that a caretaker be appointed to see that the station waiting room is kept clean, and, when necessary, heated and lighted for the accommodation of passengers on the arrival and departure of trains, and to see that package freight and express shipments are properly housed.

H. L. DRAYTON,
Chief Commissioner

ORDER No. 28161.

In the matter of the application of the Pere Marquette Railroad Company, herein-after called the "applicant company," for approval of its Live Stock Special Contract, Form No. 83, on file with the Board under file No. 6000.2.

FRIDAY, the 14th day of March, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the applicant company's proposed Live Stock Special Contract, Form No. 83, on file with the Board under the said file No. 6000.2, be, and it is hereby, approved.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28165.

In the matter of the complaint of the Imperial Munitions Board against the Canadian Pacific, the Algoma Central and Hudson Bay, and the Canadian Northern Railway Companies for charging the complainants higher rates on shipments of shell bars or blanks from Sault Ste. Marie, Ont., to Toronto, Ont., and Montreal, Que., than was charged on commercial steel bars;

And in the matter of the subsequent application of the said Imperial Munitions Board for an Order declaring shell bars or blanks to be entitled to the rates published to apply on steel billets.

File No. 28827.

FRIDAY, the 14th day of March, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

HON. W. B. NANTEL, *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Ottawa, Tuesday, the 5th day of November, 1918, the Imperial Munitions Board, the Canadian Pacific, the Grand Trunk, and the Canadian Northern Railway Companies being represented at the hearing, and what was alleged; and upon the report and recommendation of the Chief Traffic Officer of the Board, representatives for the respondent railway companies later undertaking to refund the amount declared by this Order to have been wrongfully charged and collected on such shipments,—

It is ordered and declared as follows:—

1. That the application for an Order declaring shell bars or blanks to be entitled to the rates published to apply on steel billets is refused.

2. That the rates charged the complainants by the respondent railway companies on shell bars or blanks from Sault Ste. Marie to Toronto and Montreal, as aforesaid, since May 1, 1918, were unjust, unreasonable, and excessive to the extent that such rates exceeded the lower rates in effect immediately before May 1, 1918, subject from August 12, 1918, to the increase authorized by the Order in Council No. P.C. 1863, dated July 27, 1918; the respondent railway companies being hereby authorized to refund to the complainants the excessive rates so charged and collected.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28166.

In the matter of the application of the village of Newburgh, in the county of Lennox, and province of Ontario, for an improved train service by the Canadian National Railways at Newburgh.

File No. 27633.3.

MONDAY, the 17th day of March, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what has been filed in support of the application and on behalf of the Canadian National Railways in response to the Board's request asking it to show

cause why trains Nos. 5 and 6 should not stop at Newburgh on flag signal for passengers for and from Yarker and points east, and for and from Napanee and points west, and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the Canadian National Railways be, and is hereby, directed and required forthwith to extend the arrangement at present existing to accommodate passengers from points west of Trenton and points east of Sydenham on trains Nos. 5 and 6 by stopping the said trains on flag signal at Newburgh for passengers for and from Yarker and points east, and for and from Napanee and points west.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28171.

In the matter of the application of the Grand Trunk Railway Company of Canada, hereinafter called the "applicant company," under section 258 of the Railway Act, for approval of plan No. 7601, dated October 26, 1918, showing the location, floor plans, and elevation of the applicant company's new combination station and sectionman's dwelling proposed to be erected at Vine, in the township of Innisfil, county of Simcoe, and province of Ontario, on file with the Board under file No. 29073.

MONDAY, the 17th day of March, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Chief Operating Officer of the Board, the municipality of the township of Innisfil consenting,—

It is ordered: That the said plan No. 7601, dated October 26, 1918, showing the location, floor plans, and elevation of the applicant company's new combination station and sectionman's dwelling proposed to be erected at Vine, in the township of Innisfil, county of Simcoe, and province of Ontario, on file with the Board under file No. 29073, be, and the same is hereby, approved.

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 260.

In the matter of the General Order of the Board No. 203, dated August 11, 1917, approving the regulations for the transportation by freight of dangerous articles other than explosives as amended by General Orders Nos. 206 and 207, dated respectively September 7 and October 26, 1917, and the application of the Prest-O-Lite Company of Canada, Limited, for an order amending the regulations approved by said General Order No. 203.

File No. 1717.1.

MONDAY, the 17th day of March, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what has been submitted in support of the application, and the recommendation of the Chief Traffic Officer of the Board, the chairman of the Canadian Freight Association consenting for the railway companies, as appears by his letter to the Secretary of the Board, dated January 28, 1919,—

It is ordered: That the regulations approved by said General Order No. 203, dated August 11, 1917, be, and they are hereby, amended by striking out paragraph (j) of rule 1861 and substituting therefor the following, namely:—

“(j) Cylinders containing acetylene gas must be completely filled with a porous material that has been tested with satisfactory results by the Bureau of Explosives, and this material must be charged with acetone, or its equivalent, not to exceed 40 per cent of the interior volumetric capacity of the cylinder. The pressure in cylinders containing acetylene gas must not exceed 250 pounds per square inch at a temperature of 70° F.

“Cylinders containing acetylene gas must not be shipped unless they were charged by the person or company by or from whom the cylinders were manufactured. Provided that they may be charged by a person or company having possession of complete information, furnished in writing by the person by or for whom the cylinders were manufactured, showing the nature of the porous filling and solvent in the cylinders and the meaning of the test markings, solvent indicator markings, and other markings on the cylinders.”

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28168.

In the matter of the order of the Board No. 26196, dated June 6, 1917, extending the area within which the tolls of the express companies include the collection and delivery of express freight in the city of Montreal, as defined in the order of the Board No. 18281, dated December 9, 1912, at the Tail Race, or Butler avenue, so as to include the plant of the British Munitions Company, Limited, for the period of the war only;

And in the matter of the application of the Express Traffic Association of Canada for an order rescinding the said Order No. 26196.

File No. 4214.147.

TUESDAY, the 18th day of March, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the said Order No. 26196, dated June 6, 1917, extending the area within which the tolls of the express companies include the collection and delivery of express freight in the city of Montreal, as defined in the order of the Board No. 18281, dated December 9, 1912, so as to include the plant of the British Munitions Company, Limited, for the period of the war only, be, and it is hereby, rescinded.

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 261.

In the matter of the General Order of the Board No. 102, dated February 17, 1913, approving "Regulations with respect to Railway Safety-Appliance Standards."

File No. 11654.23.

TUESDAY, the 18th day of March, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

J. G. RUTHERFORD, *Commissioner.*

Whereas reports made to the Board show a large number of accidents—sometimes resulting fatally—to railway employees because of defective coupler attachments used by railway companies;

And whereas the Master Car Builders' Association has approved an equipment dispensing with the use of links, clevises, or chains.

Upon reading what has been filed by the different railway companies affected, and for the purposes of uniformity and the safety of railway employees,—

It is ordered: That the "Regulations with respect to Railway Safety-Appliance Standards," approved under said General Order No. 102, dated February 17, 1913, be, and they are hereby, amended by adding at the end of the provision under the heading "Uncoupling-Levers" at the top of page 12 of said regulations the following, namely:—

"Cars built after June 1, 1919, must be equipped with coupler operating lever connected direct with coupler lock or lock lift without the use of links, clevises, or chains."

H. L. DRAYTON,
Chief Commissioner.

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Application of the town of Greenfield Park to be relieved from paying any part of the maintenance of the gates ordered for the protection of Lapiniere Road crossing over the Grand Trunk at a point between the town of Greenfield Park and St. Lambert, in the province of Quebec. Order No. 18824, issued March 4, 1913.

File No. 9437.920.

JUDGMENT.

The DEPUTY CHIEF COMMISSIONER:

It appears that there are two sets of gates at this point, one of which is for the protection of a spur track; and the Grand Trunk, when the case was heard in Montreal, expressed the opinion that this one gate might be dispensed with and the situation relieved by so much.

After hearing the case, we dismissed the application on the bench, but a formal order was delayed until our Operating Department made a report on the suggestion set forth by Mr. Chisholm as to the spur track gate.

We now have this report before us, and as the Grand Trunk is of the opinion that the situation should be left as it is, in accordance with the Operating Department's report, the application is dismissed purely and simply.

OTTAWA, March 21, 1919.

The Chief Commissioner and Commissioner McLean concurred.

ORDER No. 28199.

In the matter of the application of the town of Greenfield Park, in the province of Quebec, hereinafter called the "applicant," for an order amending the order of the Board No. 18824, dated March 4, 1913, apportioning the cost of the installation, maintenance, and operation of the gates at the crossing of Lapiniere Road by the Grand Trunk Railway at a point between the towns of Greenfield Park and St. Lambert, so as to relieve the applicant from paying any portion of the cost of maintaining the said gates.

File No. 9437.920.

TUESDAY, the 25th day of March, A.D. 1919,

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Montreal, January 17, 1919, in the presence of counsel for the applicant, the town of St. Lambert,

and the Grand Trunk Railway Company, the evidence offered, and what was alleged; and upon the report and recommendation of an Inspector of the Board,—

It is ordered: That the application be, and it is hereby, dismissed.

H. L. DRAYTON,
Chief Commissioner.

Daylight-Saving Change of Time.

File No. 27921.

JUDGMENT.

The CHIEF COMMISSIONER:

In view of the vote in Parliament on this question taken on the night of the 27th instant, it becomes necessary that the Board should deal with this question having regard to the railway situation.

Before the vote was taken, and for the purpose of securing uniformity of operation, Canadian railways issued circulars advancing the time of their clocks, the new time to become effective at 2 a.m. on March 30. This change of time synchronized with the change of time on American railroads, and permits railway operations to go on unimpeded. So far as railway operations are concerned undoubtedly the action taken by Canadian lines is in ease of safety and convenience.

The vote taken in the House was on the following motion:—

“That, in the opinion of this House, it is expedient to re-enact at once chapter 2, Statutes of 1918, ‘The Daylight-Saving Act, 1918.’”

Special powers are given the Board under this Act, section 5 of the Act reading as follows:—

“5. The Board of Railway Commissioners for Canada shall have power to advance by one hour the standard time used by railway companies, including Government railways, in Canada for such period as may be prescribed by the said Board, and to make such orders as may be necessary for the convenient carrying out of the provisions of this Act in so far as railway companies may be affected thereby.”

Under this section the whole question of daylight saving, in so far as railway companies are concerned, is left to the Board. Under the Board's powers the time might or might not be advanced, or might be advanced for different periods than those fixed under other provisions of the Act affecting the general public. In so far as other public bodies and the general public are concerned, the matter is covered by sections 2 and 3, which are as follows:—

“2. During the prescribed period in each year in which this Act is in force, the time, for general purposes in Canada, in each province, shall be one hour in advance of the time which under the law of the province is the time prescribed for such province, and, if there is no time so prescribed, of the accepted standard time.

“3. This Act shall be in force during the present year for such time as may be prescribed by the Governor in Council.”

I am of the opinion that it is an error to treat the Daylight-Saving Act as being an Act to which effect may be given only in the year 1918.

It is true that section 3 uses the terms: “This Act shall be in force during the present year for such time as may be prescribed by the Governor in Council.” The main section of the Act plainly contemplates that a period may be prescribed when the clocks shall be advanced during each year that the Act is in force. In my view section

3 has not the effect of limiting the operation of the Act to the year 1918, notwithstanding the words "in force during the present year."

Statutes have to be read as always speaking, and the term "present year" has reference to the current year in which it is necessary for the Governor in Council to consider the question. Section 10 of the Interpretation Act reads:—

"The law shall be considered as always speaking, and whenever any matter or thing is expressed in the present tense the same shall be applied to the circumstances as they arise, so that effect may be given to each Act and every part thereof according to its spirit, true intent, and meaning."

Unless section 3 be so construed, no proper effect can be given to section 2 of the Statute, which provides that during the prescribed period in each year in which the Act is in force the advance in time shall be made.

The only statutory provision empowering the Board to deal with the question of time is this section 5 of the Act, already set out. For the reasons already stated, I am of the view that this section is still in force and effect.

Notwithstanding the position in which the Act leaves the Board, beyond question the vote of Thursday night shows the opinion of Parliament on the subject. In view of that opinion, emphatically expressed as it was, it becomes the duty of the Board to give effect to that opinion to the fullest extent that effect may be given to it without unduly and improperly inconveniencing the travelling public and losing to Canada the benefit of important connections with American lines, the retention of which the public interest will probably demand.

The question of train movement is one which cannot suddenly be disturbed without possibilities of accident and danger to the public. For this reason I would not to-day cancel the action which has been taken by the different railway companies, but I am of the opinion that the question must be set down for hearing at the earliest possible date.

While Tuesday, the 1st of April, will not give the railway companies much time to present their case, I am of the opinion that the matter must be set down for hearing on that date. A wire to this effect will be sent to-day to the different companies. The matter will then be heard in Ottawa at ten o'clock on Tuesday, April 1, when the railway companies will be called upon to show cause why their circulars and notices should not be cancelled and standard time maintained on the railway systems of Canada.

March 29, 1919.

Commissioners Goodeve and Rutherford concurred.

Canadian Pacific Train Service.

Files Nos. 27563.56.7, 27563.56.10,
27563.56.9, and 27563.56.13.

JUDGMENT.

The CHIEF COMMISSIONER—

The Board has had before it the question of train service given by the Canadian Pacific Railway on:—

- (1) Suffield-Lomond branch which runs out of Suffield into Lomond, Alta.
- (2) Irricana-Bassano subdivision which runs southeast from Irricana to Bassano, a point on the main line.
- (3) Sterling Manyberries branch which runs out of Sterling to Manyberries.
- (4) Langdon subdivision, having regard to movement from Langdon, Irricana and Acme.

The present schedules of the company were reduced and the earnings were such that the reduction was justifiable during the past winter. Conditions have now changed and better service is required to enable proper development during the ensuing season.

The present service on the Suffield-Lomond Branch consists of one mixed train a week. This service now ought to be improved, and the old service which consisted of two trains a week restored.

Irricana-Bassano subdivision. The same considerations should apply here. The present service is one train a week. The old schedule which called for two trains a week should be again put in force.

On the Sterling-Manyberries branch the old service of two trains a week should be restored.

The complaints from Keoma and Dalroy on the Langdon subdivision is that the present mail service is entirely insufficient. At the present time there is no mail service between Wednesday and Saturday. With the restoration of a service consisting of two trains a week between Calgary and Bassano via Irricana, settlers on this line will have four trains a week.

Their complaint is, therefore, answered by the action above indicated. New train schedules ought to become effective within one week.

April 7, 1919.

Commissioner Rutherford concurred.

ORDER No. 28213.

In the matter of the reduction in the train service on the Canadian Pacific Railway Company's Suffield, Irricana, and Sterling subdivisions, in the province of Alberta, from a semi-weekly to a one day per week mixed train service.

Files Nos. 27563.56.7, 27563.56.9 and 27563.56.10.

TUESDAY, the 8th day of April, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Lethbridge, the 24th day of February, 1919, the Lethbridge Board of Trade, the city of Lethbridge, the towns of Retlaw and Foremost, the farmers and residents on the Cardston branch of the Canadian Pacific Railway Company, and the Canadian Pacific Railway Company being represented at the hearing, the farmers interested and certain of the industries affected also being represented, the evidence offered, and what was alleged; and upon the report and recommendation of an Inspector and the Chief Operating Officer of the Board,—

It is ordered: That, within one week from the date of this Order, the Canadian Pacific Railway Company be, and it is hereby, directed to restore and maintain on its Suffield, Irricana, and Sterling subdivisions, in the province of Alberta, the semi-weekly mixed train service in effect thereon previous to the 1st day of January, 1919.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28176.

In the matter of the application of the Saskatchewan Grain Growers' Association, Limited, for an order directing the Canadian Pacific Railway Company to erect a suitable station at Horizon, in the province of Saskatchewan.

File No. 25610.

THURSDAY, the 20th day of March, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Chief Operating Officer of the Board, the Canadian Pacific Railway Company consenting,—

It is ordered: That the Canadian Pacific Railway Company be, and it is hereby, directed to erect a station at Horizon, in the province of Saskatchewan; detail plans of the proposed structure to be filed with the Board for approval; and the work to be completed not later than the 1st day of October, 1919.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28173.

In the matter of the application of the rural municipality of Stuartburn, Vita, Manitoba, hereinafter called the "applicant," for an Order directing the Canadian Northern Railway Company to appoint a station agent at Vita.

File No. 4205.121.

FRIDAY, the 21st day of March, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

J. G. RUTHERFORD, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Winnipeg, the 3rd day of March, 1919, the Canadian Northern Railway Company being represented at the hearing, no one appearing for the applicant,—

It is ordered: That the Canadian Northern Railway Company be, and it is hereby, directed to appoint a caretaker at Vita, in the province of Manitoba, to see that the station is kept clean and, when necessary, heated and lighted for the accommodation of passengers on the arrival and departure of trains and to care for less than carload freight and express matter.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28195.

In the matter of the application of the Grand Trunk Railway Company of Canada, hereinafter called the "applicant company," under section 258 of the Railway Act, for approval of plan No. 7668, dated Montreal, January 17, 1919, showing the track elevation, floor layout, and location of the station proposed to be erected at Mitchell, in the province of Ontario, on file with the Board under file No. 28780.1.

FRIDAY, the 28th day of March, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon reading what is filed in support of the application, and the consent of the town of Mitchell, by letter dated March 26, 1919, filed; and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the applicant company's revised plan, No. 7668, dated Montreal, January 17, 1919, showing the track elevation, floor layout, and location of the station proposed to be erected by the applicant company at Mitchell, in the province of Ontario, on file with the Board under said file No. 28780.1, be, and it is hereby, approved.

H. L. DRAYTON,
Chief Commissioner..

ORDER No. 28190.

In the matter of the complaints of B. B. Craibbe, the township of Bucke, and the town of Haileybury, against the proposed increase in passenger fares of the Nipissing Central Railway Company as published in Tariff C.R.C. No. 20, to become effective April 1, 1919.

File No. 29168.

SATURDAY, the 29th day of March, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what has been filed in support of the complaints,—

It is ordered: That the said Nipissing Central Railway Company's Tariff C.R.C. No. 20 be, and the same is hereby, suspended pending hearing of the matter on a date to be fixed by the Board.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28202.

In the matter of the application of the Board of Trade of Metiskow, in the province of Alberta, hereinafter called the "applicant," for an order directing the Canadian Pacific Railway Company to provide a new station building and better accommodation for shipping live stock at Metiskow.

File No. 17801.

MONDAY, the 31st day of March, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Saskatoon, the 28th day of February, 1919, in the presence of counsel and representatives for the Canadian Pacific Railway Company, no one appearing for the applicants, and what was alleged,—

It is ordered: That the Canadian Pacific Railway Company be, and it is hereby, directed to erect one of its Class A-2 station buildings at Metiskow, in the province of Alberta; the work to be completed not later than the 1st day of September, 1920.

2. That, within two weeks from the date of this order, the Canadian Pacific Railway Company provide an extra car body, or other structure of equal dimensions, at Metiskow, to be used as a temporary storage place for package freight, pending the erection of the station hereby directed to be constructed.

3. That if in the meantime it shall appear to the company that the business at Metiskow does not warrant the erection of a station, leave be reserved to the Canadian Pacific Railway Company to apply to the Board for a rescission of this order.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28201.

In the matter of the application of Eugene Gravel and others on behalf of the residents of Donnelly, in the province of Alberta, hereinafter called the "applicants," for an order directing the Edmonton, Dunvegan and British Columbia Railway Company to provide better station accommodation and shipping facilities at that point.

File No. 27262.

WEDNESDAY, the 2nd day of April, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the application at a sittings of the Board held in Edmonton, the 26th day of February, 1919, the applicants and the Edmonton, Dunvegan and British Columbia Railway Company being represented at the hearing, and what was alleged; and upon the report and recommendation of an Inspector of the Board, concurred in by its Chief Operating Officer, the applicants consenting upon the understanding that such consent shall not in any way interfere with any further application made

by them in the future for improved station facilities, the Edmonton, Dunvegan and British Columbia Railway Company consenting,—

It is ordered: That the Edmonton, Dunvegan and British Columbia Railway Company be, and it is hereby, directed to construct one of its combination standard loading platform and stock yards at Donnelly, in the province of Alberta, and a station building plank platform 150 feet in length; the work to be completed not later than the first day of July, 1919.

H. L. DRAYTON,
Chief Commissioner.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of the City of Toronto, under Section 56 of the Railway Act, for leave to appeal from Order of the Board No. 28071, dated the 31st January, 1919, made upon the application of the Toronto Terminals Railway Company for authority to lay pressure steam lines across Bay, Yonge, and Scott streets, and along and across Esplanade street, Toronto.

File No. 28950.

JUDGMENT.

The CHIEF COMMISSIONER:

Application is made by the corporation of the city of Toronto for leave to appeal under section 56 of the Railway Act. The application is opposed by the Toronto Terminals Railway Company, that company objecting entirely to any question being submitted.

While it is true that no answer whatever was made to the application on its merits, that the city is protected, and that railway operations in the city terminals can be carried on more cheaply than they otherwise would be, I am of the opinion that leave ought to be given.

The position, as I see it, is that while the present Order may not injure the city, it fears it may establish a precedent to enable other structures to be built and placed upon public highways under circumstances which might injure the municipality. While I cannot conceive of this happening in connection with the operations of the Toronto Terminals Company, and while in the past orders have been made without any question as to the right of the Board to make them, carrying conduits under railway tracks, I would follow the Board's settled practice of granting leave to appeal to the Supreme Court of Canada on any legal question on which the Board's final adjudication depends and which is debatable.

Under the circumstances, and in view of the merits as stated at the hearing of the application, no stay of proceedings will be granted. The parties have agreed on the form of question to be submitted, as follows:—

"Whether the judgment of the Board, as set out in the reasons for judgment, was right in determining that the Railway Act, Revised Statutes of Canada, 1906, chapter 37 (as amended), and particularly sections 2 (21), 151 (k), 235, and 237 thereof, and 6 Edward VII, chapter 170 (Canada) confer upon the Toronto Terminals Railway Company the right, subject to the approval of the Board, to construct upon the highways of the city of Toronto the works authorized by the Order of the Board."

Order may issue accordingly.

April 10, 1919.

Commissioner Goodeve concurred.



ORDER No. 28220.

Between the Corporation of the City of Toronto, appellants, and the Toronto Terminals Railway Company, respondents.

In the matter of the application of counsel for the appellants, under section 56 of the Railway Act, as amended by section 1 of the Act of the Parliament of Canada, 1919, chapter 50, for leave to appeal to the Supreme Court of Canada from the Order of the Board No. 28071, dated January 31, 1919, made upon the application of the Toronto Terminals Railway Company for authority to lay and maintain its conduits containing pressure steam lines across the streets and between the points named in the Order.

File No. 28950.

THURSDAY, the 10th day of April, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon hearing the application in the presence of counsel for the appellants and the respondents, and what was alleged by counsel aforesaid, the question submitted being, in the opinion of the Board, a question of law,—

It is ordered: That leave be, and it is hereby, granted the appellants to appeal to the Supreme Court of Canada upon the following question of law, namely:—

“Whether the judgment of the Board, as set out in the reasons for judgment, was right in determining that the Railway Act, Revised Statutes of Canada, 1906, chapter 37 (as amended), and particularly sections 2 (21), 151 (k), 235, and 237 thereof, and 6 Edward VII, chapter 170 (Canada), confer upon the Toronto Terminals Railway Company the right, subject to the approval of the Board, to construct upon the highways of the city of Toronto the works authorized by the Order of the Board.”

H. L. DRAYTON,
Chief Commissioner.

Daylight Saving, Change of Time.

File 27921.

JUDGMENTS.

THE CHIEF COMMISSIONER:

Under an interim judgment issued herein the railway companies, who had issued circulars advancing the time of their clocks to become effective at 2 a.m., on the morning of March 31, and which action had been taken by the railway companies so as to enable them to carry on their former operations and maintain their passenger connections and freight operations with the American roads, who had already advanced their time—were required to appear before the Board to show cause why the circulars issued should not be cancelled and standard time maintained on the railway systems.

A hearing was held in Ottawa on the 1st instant, when judgment was reserved. Further representations were made by members of Parliament opposed to Daylight Saving, with a view of having the matter opened up and, if necessary, further hearings held.

In view of the action I think the Board ought to take, I am of the opinion that no further hearings are necessary or would serve any useful purpose. When the

interim judgment was issued, no consideration whatever had been given to the debates in Parliament which took place when the Bill of 1918 was passed, and this for obvious reasons.

In construing statutes the question is not what was or was not said in debate. In almost every instance opposing views can be found in any debate. It is by reason, indeed, of divergence of opinion that debates are necessary. It is the action of Parliament as crystallized into law that has to be construed. The question, then, is not what members of Parliament intended to say. The issue, therefore, is not to be determined by inferences and findings that may be drawn from a number of divergent opinions expressed in debate and by speculation as to the result of these divergent opinions on the minds and intentions of the majority, *i.e.*, members who, while voting, do not take part in the debate.

On the other hand, the question is *what did Parliament intend by what it said*. While the members speak in debate, Parliament has spoken only through the Act. As a result, in the construction of statutes, weight is not attached to the opinion of individual members of Parliament. Ramsay, J., in *Bank of Toronto v. Lamb*, 1 Q.B., at p. 186, says:—

“In referring to the Acts of legislature we express almost an excessive deference for them; but we compensate ourselves for this lip loyalty to the words of the Statute by disregarding wholly the sayings of the individual legislator.”

Cases dealing with the subject may be found collected in *Gosselin v. The King*, 33 S.C.R. 255. The Chief Justice, at p. 263, says:—

“I deem it expedient, however, to say a few words upon the question raised during the argument of the reference by counsel to the debates in Parliament for the purpose of construing any Statute. Such a reference has always been refused by my predecessors in this court and, when counsel in this case began to read from the Canadian Hansard the remarks made in Parliament when the Canada Evidence Act in question was under discussion. I did not feel justified in departing from the rule so laid down, though, personally, I would not be unwilling, in case of ambiguity in Statutes, to concede that such a reference might sometimes be useful. The same rule is observed in England.”

Since the interim judgment was issued, however, a new Daylight Saving Bill has been introduced in the Senate. It has been read the second time, and is now being considered by the Senate in Committee. This coincides with the view taken by the House of Commons, the resolution submitted there reading:—

“That in the opinion of this House it is expedient to re-enact at once chapter 2, Statutes of 1918, ‘The Daylight Saving Act, 1918.’”

It is, therefore, apparent that both Houses of Parliament consider the question in the light of an expired Act instead of in the light of existing legislation which merely requires action by the Governor in Council to be made operative during the present year for general purposes, and action by the Board to be made operative for railway purposes.

As a matter of law, under all ordinary canons of construction to be followed in determining rights as between parties, my opinion that the Act of 1918 is still in effect remains unchanged.

Different action, however, has been taken in constitutional cases where the issues involved are large and general in their application, and are not confined of necessity to individual rights. Here the issues cannot, in any sense, be described as personal. They are entirely general in their application; the whole country is affected.

This distinction is pointed out by the then Chief Justice of Canada in the Gosselin case, already referred to. Reference is made by the learned Chief Justice to Mr. Lefroy's work, where judicial opinions are collected, wherein the general rule has been more or less disregarded in the construction of the British North America Act, reference may be made to Lefroy's book (*The Law of Legislative Power in Canada*), pp. 17, 18, 26, 27, 54, 194, and 195.

The Supreme Court itself, in *re prohibitory liquor laws*, 24 S.C.R. 170, not only considered debates accompanying the submission of the resolutions of the respective legislatures, but, to some extent, adopted statements contained in them as the basis of the judgment in that case delivered. Reference may be made to the judgment of Gwynn, J., at p. 206.

In view of the action, therefore, of both Houses and the peculiar character of this question, I have examined the debates with a view of ascertaining whether or not, as has been alleged, the intention of Parliament was to enact a law which was not limited only in operation to a period to be prescribed in each year, but ceased to have all force on the expiration of the year 1918.

As might well be expected, divergent views are expressed. In the Senate, I find that the Honourable Mr. Bostock, at p. 77 of the Debates, says:—

“It says: ‘This Act shall be in force during the present year for such time as may be prescribed by the Governor in Council.’ That refers to the present year, but of course it can be put in force by the Governor in Council in another year. It is left in his hands. But, as I said before, we are now accustomed to legislation by Order in Council, so we understand the situation.”

Honourable Mr. Beique, referring to section 3 of the Act which was relied upon as limiting the whole force of the Statute to the single year, says, at p. 92:—

“‘This Act shall be in force during the present year for such time as may be prescribed by the Governor in Council.’ That is, during this year. That is so worded because this year has commenced. But when the Bill becomes law it will remain on the Statute-book until it is repealed. The Bill is a permanent Bill on its face, and I think should be interpreted as such.”

On the other hand, the contrary opinion was urged both by the Honourable Sir James Loughheed, Government leader in the Senate, and by the Honourable Mr. Ross. The leader in the Senate, in whose charge the Bill was, at p. 96 is reported:—

“If after the expiration of this year it is decided to continue it, it can be continued simply by declaring this Act shall continue in force.”

Hon. Mr. DANDURAND: Through another Act?

Hon. Sir JAMES LOUGHEED: Through another Act.

A motion to make the matter plain was negatived in the Senate, not on the ground that it was desirable that the Act should be a permanent Act, but on the ground, as I read the record, that the Bill as already expressed made it clear that the Act ceased to be effective at the conclusion of the year 1918.

The Honourable Sir George Foster was in charge of the Bill in the House of Commons. At p. 196 he is reported as follows:—

“This Bill is for this season only. My hon. friend from Queens and Shelburne (Mr. Fielding) will not need to come back next year, if the Bill does not work well, to have it repealed. Its effect ceases at the end of the season, and the duration that is given to it is in the choice of the Governor in Council; it will be proclaimed in and for the length of time that is necessary.”

It would occur to me that the expressions of opinion of the honourable members in charge of bills, in cases where the debates of Parliament can be considered (and,

in view of what appears to be a common misunderstanding in both Houses, I think they ought to be in this case), are entitled to the greatest consideration. The statements of members in charge of bills are statements which other members would naturally rely on. Over and above this, last year the Bill was a Government measure, and the interpretation placed upon it by the two members of the Cabinet having it in charge would largely represent the understanding Parliament had of the subject.

If, under the particular circumstances of this case, the ordinary question can be reversed, so that consideration is to be given not to what was *intended by what Parliament has said*, but what *Parliament intended to say*, there appears to be no doubt whatever but that Parliament understood that the Daylight Saving Act should expire with 1918.

The Board is not only a judicial but also an administrative body. The powers of the Board, under the Act, in many directions are extremely wide. Not only are they largely discretionary, but they have in certain instances been well defined to be legislative in their character.

Ought the Board now to take jurisdiction under the Daylight Saving Act, however absolute it may be in law, under circumstances which make it clear that, in so far as members of Parliament are concerned, such jurisdiction should not extend beyond 1918? I have come to the conclusion that to put the question is to answer it. Whatever the legal situation may be, under the circumstances the Board ought not to exercise that jurisdiction. This is a democratic country governed entirely through its representative assemblies. The question here, as already pointed out, does not affect rights as between parties, but an issue affecting the public as such. The wishes of Parliament, whatever those wishes may be, ought to prevail.

It is further obvious that in exercising the powers conferred on it by section 5 of the Daylight Saving Act, the Board, in any event, ought to consider the action taken by the Governor in Council under section 3.

In my opinion, the Board, under all the circumstances, can take no action under the Daylight Saving Act of 1918.

Standard or local time is determined in Canada by provincial law. The underlying basis is the Greenwich time, which is the mean time of the meridian of Greenwich, adopted in the first instance as the standard time by English astronomers, and is now the zero meridian of the world.

As an hour is equivalent to each fifteen degrees of longitude, the Atlantic standard meridian 60, which passes through Sydney and Glace Bay, is, Greenwich time, four hours slow.

The eastern standard meridian 75 is slightly west of Cornwall, and between Ottawa and Montreal; the central standard meridian 90 is some thirty miles west of Fort William; mountain standard meridian 105 passes a little to the west of Regina; and the Pacific standard meridian 120 is a short distance east of Kamloops.

Each successive standard meridian is one hour later than Greenwich, and as a result the Pacific standard meridian is eight hours slow of Greenwich time. The time of each standard meridian, theoretically, governs half an hour on each side thereof.

Most of the different provincial parliaments have found it impossible to give effect to time as required by proper meridian-reading practice. No difficulty existed in Nova Scotia, which, of course, is entirely within the half-hour of the 60 meridian.

Prince Edward Island, although also entirely within the area controlled by the sixtieth meridian, by its Act intituled "An Act to Alter the Present Method of Reckoning Time," being chapter 21 of the Acts of 1889, adopted intercolonial standard time, which was 12 minutes and 29 seconds fast of the local time of the meridian passing through the provincial clock in the Law Courts building, Charlottetown.

On the representation of the Intercolonial Railway authorities and of the Canadian Pacific Railway Company that they had determined upon the adoption of Atlantic standard time in the operation of railways in the province, and in order to prevent confusion and inconvenience to the public, New Brunswick, by its Act, chapter 5 of the Statutes of 1902, adopted Atlantic standard time.

I have been unable to find any statutory provision dealing with the question in Quebec.

The Ontario provision is found in chapter 132 of the Revised Statutes, 1914. This Act provides that whenever an expression of time occurs in any Act or in any rule of court, by-law, deed, or other instrument, heretofore or hereafter enacted or executed, or where any hour or other period of time is stated either orally or in writing, or any question as to a period of time arises, the time referred to or intended shall, unless it is otherwise specifically stated, be held to be "standard time." The Act declares that as regards that part of Ontario which lies east of the meridian of 90 degrees west longitude, standard time should be reckoned as five hours behind Greenwich time, and as regards that part of Ontario which lies west of that meridian standard time should be reckoned as six hours behind Greenwich time.

As the ninetieth meridian is the central standard meridian, it will be observed that under this Act the operation of the eastern standard meridian is carried half an hour farther west than it ought to, theoretically. The Act has been amended by chapter 20 of the Acts of 1918, section 25, as follows:—

"(4) The Lieutenant-Governor in Council may from time to time make regulations, and may from time to time amend, modify, suspend, repeal, and re-enact such regulations varying the reckoning of standard time as defined by subsections 2 and 3 hereof.

"(5) Such regulations may authorize the Ontario Railway and Municipal Board to fix the time tables of all railways subject to its control, and to make such other orders as may be necessary for the convenient carrying out of the provisions of this Act, in so far as may be necessary or convenient for carrying out the said regulations."

In Manitoba the question is covered by the Interpretation Act, chapter 89 of the Revised Statutes, 1902, section 8, ss. (r) reading:—

"The time used upon the Canadian Pacific Railway and known as central time, being the time of the ninetieth meridian of west longitude, is hereby declared to be the standard time of this province, and when any statute heretofore or hereafter passed refers to any particular time of day, such standard time shall be considered to be meant."

In Manitoba, again, theoretical requirements are not, therefore, followed, as the Manitoba Act carries the time of the central standard meridian through the whole province, while, theoretically, time based on the central standard meridian ceased between Portage la Prairie and Winnipeg and at a point some twenty miles west of Winnipeg.

In Saskatchewan time is governed by the Interpretation Act, chapter 1 of the Revised Statutes, 1909, section 6, s.s. 33, which reads:—

"The time known as 'mountain standard time' (being the local time at the one hundred and fifth meridian of west longitude and being seven hours behind Greenwich time) is hereby declared to be the standard time of the province; and when any Act refers to any particular time of day such standard time shall be considered to be meant."

As a matter of fact, instead of the time of the one hundred and fifth meridian being observed throughout the province, that time commences at Broadview and Bredenbury.

The provision as to Alberta is to be found in the Interpretation Act, chapter 3 of the Statutes of 1906, section 7, s.s. 22, which reads:—

“The time known as ‘mountain standard time,’ being the local time at the one hundred and fifth meridian of longitude, is hereby declared to be the standard time of the province; and when any act refers to any particular time of day such standard time shall be considered to be meant.”

The provision relating to time in British Columbia is contained in the Interpretation Act, chapter 1 of the Revised Statutes of 1911, section 26, s.s. (43), which reads as follows:—

“(a) Where an expression of time occurs in any Act of the legislature, whether heretofore or hereafter passed, or in any rule of court, by-law, deed, or other legal instrument, whether heretofore or hereafter made, passed, or executed, or whenever any hour or other period of time is stated either orally or in writing, or whenever any question as to a period of time arises, the time referred to or intended shall, unless it is otherwise specifically stated, be held to be what is known as Pacific Standard time, reckoned as eight hours behind Greenwich time.”

Not only is time, as theoretically correct, not being observed by legislation, but as a matter of fact time changes on the railways have not, in the past, observed the provincial enactment. To illustrate: The New Brunswick standard time is fixed by the sixtieth meridian. This carries the time of the sixtieth meridian some eighty miles west of its proper operation. The Intercolonial does not change its time in New Brunswick, but carries the time of the sixtieth meridian to Mont Joli, an appropriate divisional point in Quebec, while the Canadian Pacific, in changing its time at St. John, changes it some 70 miles east of the westerly boundary of the area theoretically controlled by the Atlantic standard meridian.

In Ontario time changes on the Canadian Pacific and the Canadian National Railways at Port Arthur and on the Grand Trunk Pacific at Armstrong, while the Ontario Statute continues the time of the meridian 75 degrees west longitude to the meridian of 90 degrees, thereby continuing that time for some 35 miles more westerly. The time of this meridian, theoretically, ceased between the meridians of the eighty-second and eighty-third degrees, at or near Woman River on the Canadian Pacific and Secord on the Grand Trunk Pacific, while, as a matter of fact, time on the railways changes approximately 40 and 55 miles east of the meridian of 90 degrees.

Without further elaboration, eastern standard and mountain times all govern farther westward than the theoretical limit. To add one further example: Theoretically, mountain time should stop and Pacific time commence about at Bassano instead of at Field. The points at which time changes in the past have been made are the result, not of theories but of the conditions required by and the demands of public safety and railroad operation.

In some of the provinces legislation dealing with daylight saving has been passed. British Columbia has adopted the measure for this year.

The provision in force in Prince Edward Island is as follows:—

“1. This Act may be cited as the Time Saving Act.

“2. During the prescribed period in each year in which this Act is in force the time, for general purposes in this province, shall be one hour in advance of the time as fixed by the Statute 52 Victoria, chapter 11, section one.

“3. This Act shall be in force in each year during such time as the Summer Time Act of Canada is in force.

“4. Where any expression of time occurs in any Statute, Order in Council, order, regulation, rule, or by-law or in any deed, time-table, notice, advertisement, or other document, the fixing of the time with respect to which is within the legislative jurisdiction of this province, the time mentioned or referred to shall be held, during the prescribed period, to be the time as fixed by this Act.” Chapter 2 of the Acts of 1918.

It will be noted that this provincial action is predicated on the Dominion Act, and treats it as continuing.

In Nova Scotia the former statute adopted for standard time the standard Atlantic meridian (the 60th). By the provincial statute of last year the following provisions are made:—

“2. Where an expression of time occurs in any statute, Act, enactment, law, order-in-council, rule of court, order, by-law, rule, regulation, deed, or other instrument heretofore or hereafter enacted, executed, or made, or where any hour or other period of time is stated either orally or in writing, or any question as to a period of time arises, the time referred to or intended shall, unless it is otherwise specifically stated, be held to be the time reckoned as prescribed by or under this Act.

“3. (1) The Governor in Council may in each year, by proclamation published in the *Royal Gazette*, prescribe that as regards any period in such year between the thirty-first day of March and the first day of November, such period to be specified in the proclamation, time shall be reckoned as three hours behind Greenwich mean solar time.

“(2) As regards any period in each year, between the thirty-first day of March and the first day of November, in respect of which there is no such proclamation, and as regards the period in each year between the thirty-first day of October and the first day of April, time shall be reckoned as four hours behind Greenwich mean solar time.

“4. Unless it is otherwise specifically stated,—

“(a) the expression ‘month’ where it occurs or is stated as in the next preceding section mentioned means calendar month;

“(b) the expression ‘year’ where it occurs or is stated as aforesaid means calendar year, and shall be equivalent to the expression ‘year of our Lord.’”

Ontario’s amendment has already been set out.

The suggestion has been made that as Greenwich time controls the standard time in every province, and that as the British Parliament has advanced Greenwich time for one hour, daylight saving automatically came into effect in Canada. This is not the case; Greenwich time has not been altered. It could not very well be. The effect of the Summer Time Act of the United Kingdom is to declare that during the prescribed period in each year in which the Act is in force, the time, for general purposes in Great Britain, shall be one hour in advance of Greenwich mean time.

No reference is made to, and I have been unable to find any Dominion statute dealing with the question of time, other than the Daylight Saving Act, which, for reasons already set out, I do not consider.

Under the Railway Act no direct jurisdiction is given the Board to compel railway companies to adopt any specific time. As a matter of fact, the railways have never fixed their time either according to the standard meridians or standard time as adopted by the provinces.

The points selected for change of railway time are either terminals or divisional points, where the necessary change can be made with the least danger to the travelling public, and are well known to all train crews.

The provincial Parliaments have no direct jurisdiction over Dominion lines as such, but if it be assumed that Dominion railways are bound by provincial enactment passed in regard to time (and in my opinion they are not), it will be observed that, under the provincial Acts, speaking generally, standard time shall be taken as the time governing unless it is specifically stated to the contrary. The railway companies have given specific notice that they operate on the new or fast time.

The Acts, on their face, refer to the expression of time in statutes, rules of court, and legal instruments rather than to the time to be observed by commercial corporations and the like, even though such commercial corporations may at the same time

happen to be public utilities, although in some instances the Act covers the question whenever the matter of time arises, whether stated orally or in writing, unless it is specifically stated that standard time shall not govern.

The only province in which the question of railway time seems to have been considered is in Ontario, where specific authority is given to the local railway and municipal board to fix the time-tables of all railway companies subject to its control, and make such other orders as may be necessary for the convenient carrying out of the provisions of the Act, in so far as may be necessary or convenient for the carrying out of the regulations. This provision is similar in character to section 5 of the Act, I treat as lapsed, conferring powers on the Board.

In dealing with the subject it is plain that the Parliaments of both Canada and Ontario were of the opinion that it was necessary to clothe their Railway Boards with special powers in order to confer a jurisdiction upon them. This of itself, particularly when the Act of last year is treated as lapsed, would not discharge any direct jurisdiction which might be found elsewhere.

A general jurisdiction is conferred on the Board by section 30 of the Railway Act. The section gives specific powers. It also gives a general power to the Board in the matter of protection, appliances, methods, etc., practically a general jurisdiction to provide for the safety of the travelling public, and a general jurisdiction as to anything sanctioned or required by the Special Act or by the Railway Act.

There is no provision, either in any of the Special Acts or in the Railway Act, relating to the standard time. There is a provision as to time tables. Under section 307 of the Railway Act, the company may make by-laws, rules, or regulations respecting the hours of the arrival and departure of trains. The Board has required companies to make changes in their service only after giving certain notice to the public.

The Board is also given a direct jurisdiction with reference to the construction and operation of rolling stock by section 268, which reads:—

“The Board shall endeavour to provide for uniformity in the construction of rolling stock to be used upon the railway, and for uniformity of rules for the operation and running of trains.”

The Board has also power to make regulations in connection with the working of trains, such as designating the number of men to be employed, providing for the use of coal instead of wood, and providing generally for the protection of property, and the protection, safety, accommodation, and comfort of the public and of the employees of the company in the running and operating of trains by the company.

A further obligation is also placed upon railway companies by section 270, which provides that all regular trains shall be started and run, as nearly as practicable, at regular hours, fixed by public notice.

I am of the opinion that the Board's general powers are sufficient for it to make any regulation required for the protection of property and the protection, safety, accommodation, and comfort of the public and of the employees of the company. It has no jurisdiction which will enable it to legislate the standard of time, as such, that the railway companies shall use.

The question then, for the Board's consideration is whether or not the change that the railway companies have made in their running time tables is improper, having regard to the protection and safety of the travelling public and the railway employees, and the accommodation and comfort of the public.

I now consider the question from the standpoint of public safety and convenience. In so far as the accommodation and convenience of the public is concerned, the companies take the stand that when railways in the United States advanced their running time one hour, it was necessary, in the interests of the accommodation and convenience of the travelling public, in view of the large amount of international business, for Canadian lines to do the same.

The companies put in evidence an estimate showing that one hundred trains were daily engaged in this business, and that the minimum daily average number of passengers was 10,000, a large and appreciable section of the travelling public.

It was argued that unless time on Canadian railways was advanced train connections in American territory would be lost, and that on the movement into Canada trains would be held up for an hour.

Members of Parliament opposing the adoption of daylight saving by the railways, admitted the necessity of maintaining international connections, but pointed out that this difficulty could be obviated entirely by the Canadian railways simply changing the running time of the trains directly engaged in international business, and connecting trains, by advancing the time of these trains one hour, and that it was not, therefore, necessary for the railways to adopt daylight saving time.

In so far as these connections are concerned, the point is perfectly well taken. Undoubtedly a train on the old running time scheduled for 8 o'clock, if the running time table be advanced to 7, makes just the same connections with American lines using summer time and gives just the same accommodation as if the time table itself were not changed but the clock instead.

In so far as the convenience and accommodation of the travelling public are concerned, either remedy would be equally efficient. In either case the necessities of the travelling public are properly observed. As a result, the action of the railway companies is not against the accommodation and convenience of the public, but on the other hand that accommodation and convenience did not of necessity compel that action, as the time tables might well be changed instead.

A further consideration intimately connected with the matter of public convenience is the fact that by far the greater number of urban centres have adopted summer time locally. I know of no law under which the Board could in any way review this action, or which would prevent municipalities, any more than individuals, keeping what time they desire.

However this may be, the cities in any event claim that their clocks have been advanced as of right, and are insistent in maintaining the benefit of summer time for their citizens, irrespective of Dominion legislation standardizing summer time, or whether it be adopted in rural districts or on the railways.

The companies in their case urge that it is their duty to meet the convenience of the travelling public, and that that convenience means the convenience of the majority of the travelling public. The estimate made by the companies as to the proportion of passenger traffic places it at 75 per cent urban and 25 per cent rural respectively, thus showing a large majority of passengers in the urban class. Mr. Sutherland, M.P., was of the opinion that this percentage was too high. The figures are not by any manner of means exact; they are estimates, and the Board has no statistics which would cover the question.

There is but little doubt, however, that the majority of passenger earnings are earned in the urban centres, and that the great bulk of the movement is either into or out of urban centres. It is also true, of course, that a large part of this movement to urban centres is supplied by rural districts. The convenience, however, of those having business to do in the cities, whether they come from a rural district or from another urban municipality, is best served by trains which fit into the business day at the point of destination rather than trains which arrive an hour later.

Having regard to the convenience of the travelling public at large no order cancelling the new time schedules can well be justified.

It is but fair to point out that it takes some time to rearrange time tables. The lines, in some instances, are particularly busy. Changes in the running time of a large number of trains that would be affected have to be carefully worked out. The mere printing and rearrangement of the time tables of itself takes time, and if the time is set back and new time tables printed, a period of at least three weeks should be allowed for the purpose.

The companies also insisted that in the interests of public safety it is practically impossible to do anything else. In short, their position was that trains crossing over the border under different times would result in the train crews having to make calculations on two different times on the same run, and that this would be an entirely improper operation and involve undue hazard both to the travelling public and to the train employees.

The evidence of Mr. Crombie, of the Canadian National Railways, in part reads:—

“The discussion has largely hinged in the past in connection with such subdivisions as are handled by one train despatcher with two different times prevailing on the one subdivision, as would be the case if the railroad lines in the United States were obliged to use the Federal time and the railroads in Canada were obliged to retain their old time. But, in addition to the hazard which arises from the confusion in the train despatcher's mind, there is the confusion which will arise in the minds of train and engine men. One gentleman says he is here to represent the engine men and perhaps he will speak directly for them, but as an operating man I would like to say the discussion has been to a considerable extent upon the risk to passenger trains; but the risk to passenger trains arises from the operation of the freight trains more than from the operation of passenger trains. There are two fundamental reasons for that greater hazard. One is that the freight trains are, of course, more numerous than the passenger trains, therefore, the hazard is greater; the other is that passenger trains are handled by the senior men, who have had long years experience and are thoroughly well tried out before they are given the responsibility of passenger trains. The freight trains are operated by the junior men. In the case of our own line, the National Railways, for instance, on first subdivision east from Winnipeg, which is one of the very heavy outlets for grain from the West, where the train service will amount anywhere from ten to thirty trains per day, you will quite readily understand that in the grain rush season, when we are employing more train men than we are at the quiet season, there will be men set up as we say, men promoted from brakeman to conductor and from fireman to engineer, to take care of the additional movement, and in place of those promoted men you will bring on green men from below. Trains are operated either by rights given them on a time table, or by rights given them by the train despatcher in train orders. Passenger trains are operated under time table rights. The freight trains more largely, or chiefly, are operated by rights and orders from the train dispatchers in such language as this: Run extra from Winnipeg to Fort Frances. Now that is all the order that the freight train may receive. That confers the right on that train to make that movement, and with time table rights trains moving on that same subdivision, passenger trains in other words, it is up to the freight train to work his own passage according to the time table, the watch in his hand, and his judgment as to what speed he can make, taking into consideration the capacity of his engine, the weight of his train, the distance he has to go, and the grades he has to overcome. You can quite readily recognize that with junior men, perhaps for the first time set up as conductor and engineer, if, in addition to watching the time, they must figure out and think, is my watch American time or Canadian time; then he takes his time table and says in regard to this particular part of the road, Are these figures Canadian time or American time, and then exercise his judgment as to whether he can go eight miles in the time between the time shown on his watch and the time on the time table, and figure out the weight of his train as against the grade. For an inexperienced man there is considerable responsibility.

"As an operating man, I want to support what has been said here this morning, that I would be very loath indeed to take the risk of operating under these conditions where we require that man to carry in mind at a certain section of the road all that I have said. He cannot tell by the clock. He must consider, am I Canadian or American, is the time-table Canadian or American."

Representations were also made by different brotherhoods interested. Mr. Lawrence appeared for the Locomotive Engineers. He was not interested in the question of daylight saving, as such, one way or the other, but took the stand that one time only ought to be observed in railway operations, and urged that for this reason daylight-saving time should be adopted on Canadian lines.

The same position was taken by Mr. Best, on behalf of the Locomotive Firemen. Mr. Best wired other officials of his organization as follows:—

"Advanced time in the United States directly affects railway employees engaged in international service. No corresponding legislation in Canada. Question before Railway Commission to-morrow morning, ten o'clock. Uniform time seems essential to safe operation. What have you to offer?"

Two answers were filed, one from the representative at Brockville, a point from which trains operate into the United States, as follows:—

"Uniform time is absolutely necessary for safe operation of trains in international service."

While the answer from the representative at Winnipeg was:—

"Your wire received. Favour uniform time on all railways."

Mr. T. J. Coughlin, who appeared for the Brotherhood of Railroad Trainmen, said:—

"While we can work under two times it is not a safe proposition. It is a second chance for a man to make a mistake. Whatever you adopt let it be uniform, let there be one time."

The difficulties and dangers consequent on change of time seem to be somewhat exaggerated, the zone of danger unduly extended. Operating conditions everywhere are not affected. If it were possible to change time latitudinally as done at longitudinal points, at divisional stations with changes of crews, there is no reason why changes of time on the latitude when understood should be any more dangerous than changes of time on the longitude which we now have.

While the paramount issue of safe operation requires as few changes as possible, and while that result is best secured by the operation of one time in both Canadian and United States territory, the real point of danger is on subdivisions where two times are necessarily used.

The companies in their case treated the situation under the supposition that time would have to be changed whenever the border of the respective countries was passed, and this rule was applied in their evidence, for example, the Canadian Pacific has a line running from Farnham to Newport. The line here crosses at mileage 26.3 into American territory. It returns to Canadian territory at mileage 32.5, and returns again into American territory at mileage 43.4, continuing in American territory to Newport, mileage out of Farnham, 58.4.

From the manner in which the case was argued, from the railway standpoint, time would be changed as follows: From Canadian to American, from American to Canadian, and from Canadian to American in this short run. As I see it, this is really unnecessary. I cannot imagine that the slightest difficulty would be raised under the American law to the Canadian railway, the trains of which are despatched from Farnham, maintaining its Canadian time through the one division.

In like manner the difficulties that have been raised in connection with the New York Central operation running into Ottawa could easily be obviated. The movement in this case is from Tupper Lake into Ottawa. The run in Canadian territory is only some fifty miles. There are no important intermediate stations on it, and no points at which complications would arise between Canadian railways, if this comparatively short run in Canada was operated on American time, thus obviating any change in time on this run.

If, as a principle of general application Parliament should determine that in this country summer time cannot be adopted and no time except that made standard by provincial Act can be used, I am of the opinion that the time at the despatching headquarters of any international division, in the interests of public safety, should apply throughout that division, for example, on the Grand Trunk line to Portland, despatched out of Montreal, Canadian time ought to be maintained to Island Pond, Vermont. Island Pond is a division point and is the end of the line of the Canadian crews. The time at this point would become American.

The same practice would apply to the operation of the branches to Moore's Junction, Massena Springs, and Alburgh Junction. Conversely, the Boston and Maine running into Canada, despatched from White River Junction, would maintain American time to its Canadian terminal at Sherbrooke.

This practice could not apply, however, generally. For example, on New York Central trains running into Montreal, the time would have to be changed in transit on the one division at Adirondack Junction. The same considerations apply to the service on the Delaware and Hudson system, which connects with the Canadian Pacific at Delson Junction, and to the Canadian Pacific, Toronto, Hamilton and Buffalo, and New York Central trains operating between Toronto and New York *via* Buffalo.

Another important movement is that of the Canadian Pacific, Montreal to St. John. The changes here, however, can be made at divisional points. In order to do this American time would have to be adopted in Canadian territory at Megantic and carried as far as McAdam Junction in New Brunswick.

In western territory, applying the principle above stated, there would seem to be no reason why the Canadian National system should not be operated on slow time in American territory. This would necessitate no change of time whatever on that movement.

On the movements from Winnipeg south different considerations apply, and the time would have to be changed. The service running from Neche into Portage la Prairie is despatched from American territory, as is also the service from Wakopa to Brandon. If the lines maintained American time to Portage la Prairie and Brandon, no operating difficulty would result.

The Operating Department advises that in regard to Grand Trunk Pacific movements through Northgate and the Canadian Pacific movements through North Portal and Coutts, time can be changed as at a divisional point owing to the fact that the Canadian crews hand the train over to American crews at the border.

I should point out that the Canadian Pacific do not always change crews entirely at division points, as the train conductors are not changed at Broadview, although the engineers and firemen are; so that, as a matter of fact, conductors on this line now have to operate on two times.

The international movement is a good deal involved in British Columbia, having particular regard to the operations of the Great Northern. The legislature of British Columbia, however, has adopted daylight saving.

Giving full effect, however, to these considerations, undoubtedly it is more dangerous to operate railways under two times that it is under a single time, although it well may be that that operation can be carried on without accidents.

Theoretically, there should be no trouble at all in changing time. It is a very simple operation. Theoretically there ought to be no accidents at all in railway transportation. The rules, if observed, would prevent accident. This, of course, does not

apply to cases where accidents occur owing to the destruction of material. A very large percentage, however, of accidents occur owing to what has been termed "failure of the human element," and the effort in railway operation is to reduce the opportunities for failure of the human element to as small a compass as possible.

With this end in view, derrails and interlocked signals are insisted on at level crossings and drawbridges. These appliances involve a large expenditure. They would be entirely unnecessary if it were safe to rely on the human element. An ordinary signal would be all-sufficient as long as it was observed. For the same reason, time locks are placed on signal apparatus. Automatic block signals are installed. Double train orders are now issued as against single train orders, so as to provide a check on the mental operations of the conductors, engineers, and operators, and to afford a chance, in case of failure, for correction before disaster occurs.

In order to make this the more certain the rules require the reading of all orders the one to the other by the different officials handling them, and require conductors and engineers to advise the brakemen and firemen of the contents of all orders received.

As a matter of general experience whenever two times are used in one municipality mistakes are made in appointments and misunderstandings occur. This doubtless is well appreciated in Ottawa, owing to the fact that while Parliament observes standard time, the hotels, shops, business institutions, and the general Ottawa public observe summer time. I have no doubt this has proved a great personal inconvenience to members of parliament owing to the fact that their hotels and the great majority of people they do business with observe summer time.

Railway employees to a large extent live in urban centres, and if railway companies do not observe the local time in effect where the railway employees live and, to a large extent, work, they would be subject to similar inconveniences. But the obligation of the railway crews to correctly observe two times is much more serious than in the ordinary case. Mistakes in appointments owing to conflict of times, while vexatious, are certainly as a rule not serious. In the case of a conductor or engineer making such a mistake when different times have to be observed on the one division or run, particularly where those in charge of freight trains are obliged to calculate where an opposing passenger train running on a time different from that they are for the moment operating on should be passed, a head-on collision would in all probability result.

It is impossible for the Board to hold that the railways, in adopting the time used on the American lines, have done anything which militates against the safety of the travelling public or the employees working on the trains. On the other hand what has been done is in ease of public safety.

I have hitherto made no reference to the arguments made by members of Parliament opposed to daylight saving. This is not because they are not deserving of the most careful consideration, but because they require the consideration of a question which, as I see it, this Board has no right to pass upon. The issues presented were, in substance, as to whether daylight saving should be enforced against the wishes of a great number of agriculturalists and some inhabitants of cities.

The Board has no jurisdiction whatever to force summer time on anybody, nor, on the other hand, to prevent its use by railways unless such use is shown to be against the comfort, convenience and safety of the travelling public. The matter of settling the time standard of the country has never been delegated by Parliament to the Board. In my humble judgment it ought not to be.

It is unfortunate that the question of public safety has become interwoven with the discussion of the question; unfortunate that unless summer time be adopted in Canada, more or less danger will result to the Canadian travelling public. It is entirely open to Parliament to consider whether or not these circumstances are or are not offset by other disadvantages, or whether the disadvantages, in turn, of summer time in some parts of the country are not outweighed by the advantages of summer time in some other section.

These considerations are not open to the Board. It can only consider time as an incident to railway operation. As already pointed out, local time has never been observed by railways operating in Canada, nor has it been observed by railways operating in the United States. The different points in the United States, where time now changes under American law, were fixed by the exigencies of railway operation.

I find that in England the practice of the railways, before the English Act of 1880 was passed, which standardized the mean time of the Greenwich standard meridian for England and Scotland, was to run on Greenwich time and pay no attention to local time, and that in some cases clocks, as a result had two sets of hands, the one showing Greenwich time and the other the time of the locality.

Further, there is no Dominion law giving the Board any basis on which to fix railway time. If it had to be sun time it would in most instances depart entirely from local time as fixed by local legislatures, and would bring about chaos. If the railways, again, are to be run on provincial standard time, notwithstanding the exceptions made in the provincial acts arbitrary changes would have to be made in former railway practice of many years standing. Again this year, the local time in British Columbia is summer time and if local laws are to be adopted the change in time between British Columbia and Alberta would be two hours. Time changes of necessity are more or less of a nuisance and more or less of a danger in railway operation. The changes worked about by longitude must be put up with, but in order to obviate the necessity of a change brought about by latitude in the future it is possible that Parliament will think the matter of sufficient importance to bring up the question with the proper authorities of the Government of the United States. Daylight saving is a matter for Parliament, and the Board having no jurisdiction cannot pass upon the merits of the issue one way or the other.

OTTAWA, April 11, 1919.

Commissioners Goodeve, Boyce and Rutherford concurred.

THE DEPUTY CHIEF COMMISSIONER:

The Board is vested only with the powers given it by Parliament. Its duty is to enforce the railway legislation of the Dominion Parliament, and to exercise its judicial and executive powers in the best interests of all, railway companies included.

On April 1st instant, railway companies operating in Canada advanced their time by one hour in order to operate their trains in conjunction with the American roads with which they have considerable international traffic. The railway companies on the other side of the border take this step in obedience to the law of the land, where a Daylight Saving Act is in force for 1919.

The question now before us is to know whether, by so doing, our Canadian railway companies have done anything illegal, and whether the Board should order them to revert to the old time.

In the first place, have we a standard time in Canada, established by the Dominion Parliament? It appears that there is not any.

In the year 1918 the Parliament of Canada enacted a law which is called "The Daylight Saving Act," where a standard time is mentioned. This standard time mentioned by the Dominion of Canada is the "accepted standard time" and does not refer to the standard time as adopted by the principle countries of the world.

In my opinion the Act of 1918 has passed out of existence and, it goes without saying, that the jurisdiction vested in the Board by it has also expired.

Our accepted standard time, therefore, is the time that everybody is following all through Canada, and which does not exactly correspond to the 15 degree divisions marked from the Greenwich meridian.

This time is followed willingly by everybody. But what if the Divine at the head of his congregation—I am speaking of the province of Quebec where the legislature does not appear to have enacted as to a standard time to be observed—was to advance the time in his parish by one hour? Would anybody under his jurisdiction have the right to apply for a mandamus or any other writ to force him to follow the accepted standard time? I do not think so. And if the head of a simple parish is vested with such power, why should not towns and cities have the right to do the same? Why should not railway companies have the right to fix the time of their trains under the provisions of the Railway Act?

As far as railway companies are concerned, they have their own interests in mind in fixing their time, and they desire to operate their system in a practical manner. They really opened up this country, and after opening it up they adopted whatever time best suited their purposes. Their dictum was accepted by everybody, as everybody depended upon them in almost every instance of their daily life. They have seen fit to adopt an early hour because of their frequent connections with the American roads, and if I am not mistaken the great majority of the Canadian people, especially those located in the larger centres, are anxious to do likewise.

Certain portions of the country, where international correspondence is not so active, seem to have prevented the re-enactment of the law forcing everybody to follow, during the summer time, an earlier clock.

I do not think we have power to intervene in the matter. The railway companies are at liberty to adopt whatever time they choose, in accordance with the Railway Act.

In view of the evidence given at the hearing in this matter, I, for one, would be willing to report favourably, as I think in advancing their time they have acted for the benefit of the public in general.

OTTAWA, April 11, 1919.

Application of T. M. Kelly, Sebringville, Ont.

File 29087.

JUDGMENT.

MR. COMMISSIONER BOYCE:

The applicant, one of many, and on behalf of the majority of farmers tributary to Sebringville, Ont., on the Stratford and Goderich branch of the G.T.R., asks for the establishment of a siding to accommodate about four cars, also a small shelter, with a freight shed or freight room attached, to be located at or near site indicated, at crossing at mileage 38, about midway between Sebringville and Mitchell stations, which are eight miles apart. It is made to appear, in support of the application, that the district to be served by the facility asked is one of the best, if not the best, farming sections in the province of Ontario. That almost every part of ground is under cultivation. That some of these farmers, although living within three miles of the railway, are nine or ten miles from a station.

Facilities for accommodating all traffic of this excellent farming district are furnished by the stations of Sebringville and Mitchell, which are eight miles apart—not an unreasonable distance, having regard to the settlement and traffic afforded. The drawback is the distance that farmers tributary to one or other of these stations have to haul their produce—a difficulty common to every agricultural country—and, in most cases, overcome by good roads and improved vehicles. It is impossible in considering adequate facilities to be provided by railways to so locate railway stations, sidings, or shelters, as to offset the natural disadvantages of highway traffic to which the locality may be subject. (In this I agree with Mr. Commissioner McLean's opinion, in *re* Ratho station, August 5, 1915, file 25807.) To do so would impose very serious burdens upon the railway company disproportionate to the revenues obtained from the locality, which is a consideration, especially just now, of very great impor-

tance. It will be seen that it is quite possible, if such a policy were exercised too generously, to break down a transportation system by a too zealous regard for serving the convenience of 'tween station shippers. (I refer also to *re* Staunton, Alta., file 17522; *re* Ribstone, Alta., file 12578, and in *re* St. Louis de France, county Champlain, file 23565.) The discretion appealed to is a judicial one and must be carefully exercised, or injury may result, instead of benefit, not only to local shippers, but to all served by the railway system.

A haulage of nine or ten miles to a station in a settled district, extensively cultivated, appears a hardship, but it is necessarily confined in its extent to a modicum of the traffic handled at Sebringville and Mitchell, to what proportion is not apparent.

The total traffic at Mitchell (incomplete as to 1917 and 1918, by reason of a fire that destroyed the records of those years) is as follows:—

MITCHELL.			
Year.	Outwards.	Inwards.	Total.
1914.	7,497	13,440	20,937
1915.	9,384	13,989	23,373
1916.	7,300	15,794	23,094
1917.	7,649	15,937	23,586
1918.	9,162	.....	.....

SEBRINGVILLE.			
1913.	2,194	3,416	5,610
1914.	1,769	3,487	5,256
1915.	3,039	4,187	7,226
1916.	1,939	3,400	5,339
1917.	1,505	2,420	3,925
1918.	2,597	1,405	4,002

An average of 14,000 tons to each station—certainly not an excessive annual tonnage.

The precedent which would be created by the granting of the application is not a desirable one, and I see no preponderance of necessity to justify special treatment in this case.

OTTAWA, April 11, 1919.

MR. COMMISSIONER McLEAN:

I agree in the disposition recommended by Commissioner Boyce. Where there are hauls of eight or ten miles to a railway station, as in the present instance, there are inconveniences unquestionably. In the Ratho case, to which reference is made by Commissioner Boyce, application was made for the establishment of a flag station at Ratho, three miles from an existing station. That case was stronger than the present case in that the railway possessed land at the point where the accommodation was asked for, on which land it had at one time a station in existence but which had been burnt down; and the Order as issued directed the re-establishment of this facility. Notwithstanding this, it appeared to me in that case that the situation was that if the stations were not an unreasonable distance apart, and that if reasonable facilities were afforded at them, the Board was not justified in intervening to direct an additional facility notwithstanding the added convenience that would be available. To have short hauls from all producing points to railway stations would be extremely convenient and, if reasonably feasible, extremely desirable. The burden on the railway, however, under The Railway Act, is to locate stations at reasonable distances apart and to provide adequate facilities thereat; and it is not called upon to equalize the existing highway disadvantages.

It is true that in the present instance the existing stations, Sebringville and Mitchell, are some eight miles apart and the station asked for is about midway

between. It is true that in various cases the railway has of its own volition put in stations, the distances between which are even less than what is asked for if proposed facilities were given. This, however, is a matter in which, under The Railway Act, it has a discretion from the standpoint of development of traffic. The Board cannot go outside The Railway Act for power; it must find its powers within that Act, and the power which it is given not so much one of an initial discretion as to station installation, as one of regulative power in regard to an apparently improper exercise of discretion by the railway which it has under The Railway Act.

When a railway establishes a facility, it takes the responsibility either of profit or loss as to the facility. The Board not being empowered to manage railways has no such position either of advantage or liability.

While there is, as already pointed out, an element of inconvenience which the applicants naturally consider as being important, I do not see that such a case of inadequacy of facilities as would justify the Board in intervening has been made out.

The decisions referred to by Commissioner Boyce, namely, *re* Staunton, Alta., *re* Ribstone, Alta., and in *re* St. Louis de France, county of Champlain, deal with a similar situation in each of which cases the Board found that the existing stations were not an unreasonable distance apart; the Board was of opinion that it was not proper to direct the installation of an additional facility in order to offset the existing highway disadvantages.

April 18, 1919.

In the matter of the application of the corporation of the township of Nepean and Westboro Police village for disallowance of a proposed tariff of the Ottawa Electric Railway Company, C.R.C. No. 5, published and filed to become effective November 18, 1918; and in the matter of the two several Orders of the Board, No. 27830, dated 6th November, 1918, suspending the tariff, and No. 28120, dated 25th February, 1919, by which the said tariff C.R.C. No. 5 was disallowed.

Case No. 2987.

JUDGMENT.

The CHIEF COMMISSIONER:

The Ottawa Street Railway Company desire to appeal to the Supreme Court on issue of law.

Whatever consideration ought to be given to legal issues, the outstanding facts of this case are:—

1. The company's investment in its railway is made out of its general or common funds derived from a common source. These railway properties cover not only lines within Ottawa proper, but in Hintonburg, and the lines to the Rifle Range, the Experimental Farm, and Britannia.

2. The whole investment of the company so made has resulted in the company earning dividends at the rate of 15 per cent per annum. The 15 per cent dividend is still maintained.

3. A return of 15 per cent from the total stock investment cannot but be regarded as ample.

The company's position, however, is that the earnings which it makes under its agreement with the city of Ottawa cannot be considered in determining rates to be charged outside of the limits of that municipality and Hintonburg; that these profits are fixed under agreements; and that if the agreements had turned out to be unprofit-

able the company nevertheless, was bound by them; and that simply because the agreement has turned out to be profitable was no reason why the company's legal right to exact tolls on lines not covered by the agreements mentioned should be denied.

It is true that the Railway Act contemplates a system of tolls and tariffs which provide for a measured service and a just and reasonable return to the carrier therefor; and that large earnings on one part of the system could and would afford no reason why fair, just, and adequate remuneration should not be allowed for service on another part of the line where traffic conditions are entirely different and where, for the measured service given, a rate on a higher basis would be but just and reasonable. In other words, that excessive profits on one part of the system could not be a controlling factor in considering what a just, fair, and reasonable rate should be for a measured service on an entirely divorced and different section of the system. On the contrary, it would be the duty of the Board to reduce rates where excessive profits were earned, to the end that the tolls as a whole should be fair, just, and reasonable having regard to the conditions of traffic and the measured service rendered in each case. Such action is not open to the Board in the present instance. The Ottawa agreement governs. The bulk of the company's service is for a flat and unmeasured rate.

The Railway Act does not distinguish between steam, electric or street railways. I would doubt very much whether the details of street railway operation and the requirements of street railway traffic, differing as they do from those of ordinary railways of the country, were ever considered in detail. The only references in the Act to the street railway are found in the sections referring to crossings, where a street railway crosses a Dominion line, and dealing with the question of safety, conferring no jurisdiction on the Board over the street railway as such—merely over the crossing, and then only to the extent necessary in the interests of public safety at such crossing.

Reference is also made to street railways in section 235, which limits the right of the Board to sanction the route of a street railway or tramway, or any railway operated or to be operated as such, along any highway which is within the limits of any city or incorporated town, until the company has first obtained consent therefor by by-law of the local municipality.

Mr. Chrysler, for the company, insists that the extension of its line from Holland avenue to Britannia, which is built entirely on the company's own right of way, under the Act of 1899, is not a street railway at all. He points out that the company had absolutely no rights of expropriation until this Act was passed; that it had not been considered necessary to give the company any such rights as the company, being merely a street railway company and operating merely upon highways, did not require the usual right of expropriation for railway purposes; that the character of the line to Britannia was entirely different; and that no street railway operations were contemplated, but the building of a railway under the usual terms of the Railway Act, on its own private right-of-way, without any necessity for street occupation or municipal franchise.

It is true that the company did acquire a private right-of-way from Holland avenue to Britannia. It is also true that its operations between these points are not bound by or subject to any municipal franchise agreements. In my opinion, however, the essential character of the company is not changed. It obtained authority to construct the line to Britannia "as an extension of its present railway." It is in effect operated as a street railway, or tramway, in so far as its physical operations are concerned, apart from highway occupation. It is used by the public for a like and similar purpose.

In my view it cannot be said that a street railway company loses its character as such simply because a portion of its system has been placed on a private right-of-way instead of being carried entirely on city streets; or that the character of that part of the enterprise placed on a private right-of-way of necessity differs from the

rest of the system. One of the characteristics of street railways is the flat rate as opposed to measured fares on a mileage basis.

Not only was the line built out of the company's general funds, but the earnings are treated as part of its general earnings. Exhibit No. 11 filed by the company is as follows:—

Car Earnings, Year ending December 31, 1917.

—	Car Miles.	Car Hours.	Passengers.	Earnings.	Earnings per Car Hour.	Earnings per Car Mile.
				\$ cts.	\$ cts.	\$
Broad and Elgin	340,437	39,684	1,920,607	80,134 85	2 02	2354
Preston and Rockcliffe. . . .	841,841	79,696	2,895,627	119,128 81	1 50	1415
Hull and St. Patrick.	765,335	89,512	4,788,696	202,755 25	2 27	2649
Rockcliffe and Range.	5,350	611	3,814	157 31	0 26	0294
Bank and Laurier.	849,251	107,495	7,361,839	306,490 63	2 85	3609
Gladstone and Elgin	487,138	59,186	3,399,265	140,422 19	2 37	2883
Farm and Britannia Jet. . . .	127,506	11,909	171,263	6,903 28	0 58	0541
Britannia and Laurier.	826,241	81,497	4,681,934	193,654 67	2 38	2344
McKellar and Laurier.	694,137	69,320	4,057,334	169,288 74	2 44	2439
McKellar and Britannia. . . .	60,805	4,351	67,313	2,726 97	0 63	0449
1917.	4,998,041	543,261	29,347,692	1,221,662 70	2 25	2444
1916.	4,858,200	519,315	27,633,778	1,129,723 23	2 18	2325
Increase, 1917.	139,841	23,946	2,313,914	91,939 47	0 07	0119

From this it will be observed that the service from Britannia, which is in part given by the through Britannia-Laurier service and in other instances by the service called McKellar-Laurier, with a stub-line service from McKellar to Britannia, is treated by the company in exactly the same manner as all its other lines.

The schedule shows the earnings on the through lines to be satisfactory, but as a matter of fact the earnings on the branch, taken by itself, as found in the judgment, are inadequate.

Although the operations of the Britannia line have been entirely intermingled with those of the company as a whole, I am of the opinion, following the Board's usual practice, that the company ought to be allowed to raise the questions of law which it desires. The company desires the following questions to be submitted:—

1. Whether, upon the proper construction of the agreements with the city of Ottawa and the village of Hintonburg, the Statutes relating to the Ottawa Electric Railway Company and the relevant provisions of the Railway Act (the evidence adduced, the exhibits filed, and what was alleged by council), the Board was right in disallowing the tariff of the company filed providing for payment of additional fare for carriage upon the extension from Holland avenue, notwithstanding that the Board has found as a fact that the company did not require additional revenue.

2. Also whether, upon the proper construction of the said agreements, statutes, evidence, and exhibits for the purpose of computing the toll to be charged to passengers upon the said extension, the point of commencement of the said extension should be considered to be at Holland avenue or at the former westerly limit of the village of Hintonburg, now the city of Ottawa.

The application is opposed by the municipalities interested, who urge that no appeal ought to be allowed. The municipal representatives, however, do not object to the form of these questions as such.

The municipalities urged, in the first instance, that as a result of the extension of city fares, the population along the lines served to Britannia had very largely increased, many houses were built, and the people residing there, working as they do in Ottawa, were obliged to use cars every day, and that great hardship would result if the conditions under which these people had made their investment and created their homes were changed.

It was also submitted on behalf of the municipalities in opposing the company's application for leave to appeal that, while transactions in real estate were very materially affected by the company's filing of its advanced tariffs, on the judgment of the Board being delivered disallowing the tariffs, further investments had been made.

It is undoubtedly the fact that population along the line has increased, that houses have, to a very considerable extent, been built since single fare was adopted. Undoubtedly again, real estate would sell more readily if the district could be reached by the single fare from any point in the city; but, as I see it, these considerations can afford no reason why the legal rights of the company should not be determined.

I am of the opinion that as the matter is going to the Supreme Court, a further question should be submitted which would clearly cover the matter of jurisdiction. Measured tariffs and measured rates are contemplated by the Act—sections 330, 331, and 332. The tariff under which the company is now operating, which was duly filed, covers the following territories:—

(a) Between points within the limits of the city of Ottawa, and between points therein and the Experimental Farm and intermediate points.

(b) Between points within the limits of the city of Ottawa and the Rockcliffe Rifle range and intermediate points; and

(c) Between the westerly limits of the city of Ottawa and Britannia-on-the-Bay, and intermediate points.

The tariff extends similar treatment to all three territories, with the result that the fares reserved by the city agreement are extended over the whole of the Britannia line.

The question I would submit on the matter of jurisdiction is:—

Has the Board the right to treat the company's operations as a whole, and continue the existing tariff; or must the Board permit the filing of tariffs on a mileage basis covering services on the Britannia line without reference to the larger part of the system covered by municipal agreement?

I am of the opinion that in this case the Supreme Court ought not to be burdened with a mass of unnecessary evidence and exhibits; that all material facts are to be found in the argument, statutes, and judgments of the Board. The case is also one in which, owing to the fact that a long time has elapsed since the application was first made, for the purpose of enabling the different parties to consider the form of questions and the stand they desired to take, the parties should agree to expedite the appeal.

April 14, 1919.

Commissioner McLean concurred.

ORDER No. 28230.

In the matter of the application of the corporation of the township of Nepean and Westboro Police village for disallowance of a proposed tariff of the Ottawa Electric Railway Company C.R.C. No. 5, published and filed to become effective November 18, 1918;

And in the matter of the two several Orders of the Board, Number 27830, dated the 6th day of November, 1918, suspending the effective date of said tariff, and Number 28120, dated the 25th day of February, 1919, by which the said tariff, C.R.C. No. 5, was disallowed.

Case No. 2987.

MONDAY, the 14th day of April, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon the hearing of the application, in the presence of counsel for the Ottawa Electric Railway Company, the township of Nepean, the police village of Westboro, and the city of Ottawa respectively, certain of the property owners affected appearing by counsel and in person, the evidence adduced, and the statutes, agreements, and exhibits filed and referred to, and what was alleged by counsel,—

It is ordered: That the said the Ottawa Electric Railway Company, be, and it is hereby, granted leave to appeal to the Supreme Court of Canada from the said Orders upon questions of law.

The questions upon which the company desires to appeal are as follows:—

1. The questions for argument submitted upon the appeal arise out of the following facts:—

(a) The Ottawa Electric Railway Company was incorporated under the name of the Ottawa City Passenger Railway Company by Statute of the province of Canada, being chapter one hundred and six of the Statutes of 1866, with power to construct lines of railway for the passage of cars, carriages, and other vehicles upon certain named streets in the city of Ottawa and in the village of Hintonburg and also:

“along and upon such other streets within the said city and the municipalities in Upper Canada adjoining the said city or any of them as they may be authorized to pass along under any subsequent agreement between the said company and the corporations of the said city and of the adjoining municipalities, or any of them, and any by-laws of the said corporations, or any of them, made in pursuance thereof,and to take, transport and carry passengers and freight upon the same.”

(b) The directors of the company were empowered by section eight of the statute to pass by-laws regulating the fares to be received for passengers and freight transported upon the railway.

(c) The Legislature of the province of Ontario, in 1868, passed an Act relating to the company (thirty-one Victoria, chapter forty-five) by which, among other things certain sections of the Railway Act, chapter sixty-six of the Consolidated Statutes of Canada, 1859, were incorporated with and made part of the Acts affecting the said company including section nine which conferred power to acquire lands by voluntary grant, or to purchase lands for the purposes of the railway, but no power was given or machinery provided for the expropriation of land, sections ten to nineteen of the general Act being excluded.

(d) In 1890 Messrs. Ahearn and Soper entered into an agreement with the city of Ottawa to operate lines of electric railway upon other streets in the city of Ottawa, and with their associates became incorporated as the Ottawa Electric Street Railway Company by a charter granted pursuant to the Ontario Municipal Street Railway Act, chapter one hundred and seventy-one of the Revised Statutes of Ontario, 1887; section four of the last-mentioned statute amongst other things empowered a company incorporated under it to operate over and upon lands purchased or leased by the company for that purpose.

(e) For a time both of the companies operated upon different streets in the city of Ottawa, the Ottawa City Passenger Railway being operated by the power of horses, and the Ottawa Electric Street Railway by the power of electricity.

(f) In 1892 an Act was passed respecting the Ottawa City Passenger Railway Company (chapter fifty-three of the Statutes of Canada, 1892) which conferred upon the Ottawa City Passenger Railway Company *inter alia* power to construct a line of railway across the Union bridge into Hull, in the province of Quebec, and also to operate by the power of electricity.

(g) By the Act last mentioned the Companies Clauses Act (Revised Statutes of Canada, chapter one hundred and eighteen), except sections eighteen and thirty-nine was made applicable to the said company, including the power to acquire lands under section five.

(h) An amalgamation between the two companies having been agreed upon with the consent and approval of the city of Ottawa, two agreements were made in 1893, one between the Ottawa City Passenger Railway Company and the Ottawa Electric Street Railway Company, and the other between the said two companies then about to be amalgamated and the city of Ottawa; the latter agreement applied to all the lines of street railway within the city, and the said agreement was confirmed by a Statute of the Dominion of Canada, chapter eighty-six of 1894, and also by a Statute of the province of Ontario, chapter seventy-six of the Statutes of 1894; and the lines of street railway constructed by each of the companies were declared to be works for the general advantage of Canada, and the Ottawa Electric Railway Company was declared to be subject to the legislative authority of the Parliament of Canada.

(i) Under the said agreement the fares upon the lines of the company within the city of Ottawa were governed by clauses forty-two to forty-nine of the said agreement and provided *inter alia* that no higher fare than five cents should be charged for the conveyance of one passenger from one point to another on the said line and branches thereof within the then present city limits.

(j) On the eleventh of May, 1895, and the sixteenth of August, 1895, by two several agreements entered into by the Ottawa Electric Railway Company with the municipality of the village of Hintonburg (which then adjoined the city of Ottawa on the west) authority was given to the company to construct lines of street railway upon certain streets in the village of Hintonburg and it was therein agreed that the fares made effective within the city of Ottawa by the agreement of 1893 should also be the fares effective within the municipality of Hintonburg as to the lines of railway to be constructed within that municipality. The limits of the village of Hintonburg were fixed by a by-law of the county of Carleton, incorporating the said village, passed on the fourteenth day of December, 1893.

(k) The provision as to the fares in the Hintonburg agreement is contained in paragraph thirty-seven of the agreement dated the eleventh of May, 1895:—

“No higher fare than five cents shall be charged for the conveyance of one passenger from one point to another on the said line and branches within the present and any future limits of the village of Hintonburg and from thence to any point within the present limits of the city of Ottawa or to the Experimental Farm.”

and the company contends, but the respondents do not admit, that upon the proper construction of the agreements the words "the said line and branches" in this clause referred to the lines of street railway or branches upon named streets in the village of Hintonburg, or such other streets upon which the company should be authorized to operate by any further agreement with the municipality.

(l) By Act of the Parliament of Canada, Statutes of 1899, chapter eighty-two, the Ottawa Electric Railway Company, which had in the meantime constructed its lines of street railway in the city of Ottawa and in the village of Hintonburg (including certain alterations and additions authorized by by-law of the city of Ottawa), pursuant to the several agreements above referred to was authorized "as an extension of its present railway" to construct and operate by means of electricity, or other motive power, except steam, "a double or single track iron or steel railway from some point on its present railway in the municipalities of Hintonburg or Nepean, in the county of Carleton; to some point at or near Bell's Corners, in the township of Nepean."

(m) At the date of the passing of the last-mentioned Act the line of railway of the company extended westerly through the village of Hintonburg to Holland avenue; thence southerly at right angles along Holland avenue in the said village and the extension of the railway authorized by the Act of 1899 was in fact constructed from Holland avenue westerly to the western boundary of the said village, a distance of about nineteen hundred feet, and in the township of Nepean to Britannia park on lake Deschene, a distance of four miles and three-tenths of a mile from Holland avenue, and was not constructed to Bell's Corners.

(n) After the company had acquired the powers conferred upon it by the said Act of 1899 the said extension was built upon the private right-of-way of the company acquired by it for that purpose. It was not built upon a street or highway at any point except where it crosses highways between its terminal points, and was not the subject of any new agreement with the municipality of Hintonburg or of the township of Nepean.

(o) Apart from the Britannia line and some portions of the Rockcliffe extension east of the city limits, the company has no tracks constructed on its private right-of-way outside of the city limits. Its construction in the city is on streets with some insignificant exceptions where for convenience a private right-of-way has been used. The company does not contend that any extra charge should be levied within the city limits for any operation over private right-of-way, except upon the said extension westward from Holland avenue.

(p) The company operates its cars over routes it has designated. The cars operated over the Britannia lines usually operate from Britannia to and through Ottawa to the corner of Charlotte street and Laurier avenue and return to Britannia. The distance from Britannia to Charlotte street is 8.67 miles. While the operation of the Britannia line, taken by itself, has been unremunerative the results of the operations in the city have been such that proper returns in the operation of the route as a whole were earned.

(q) On the tenth day of December, 1907, pursuant to the provisions contained in the Ontario Municipal Act the village of Hintonburg was, by order of the Ontario Railway and Municipal Board, incorporated with and became part of the city of Ottawa.

(r) The Board has found, as a fact, that the operation of the Britannia extension, considered by itself, is not remunerative, and that if the operation of this line can be so considered it is clear that the company is entitled to an increased remuneration for the service it performs thereon.

(s) The Board has also found that the operation of the lines of the railway as a whole, including those within the city of Ottawa, have returned or are returning to the company adequate profits. The company contends that inasmuch as the receipts

from the lines within the city of Ottawa are the result of the operations of the company under a schedule of fares limited by the agreement with the city and confirmed by the Act of Parliament such favourable result is not a valid reason under the Railway Act for disallowing a tariff which will give the company power to collect additional fares upon the Britannia extension.

2. The questions for the consideration of the Supreme Court are:—

(1) Whether, upon the proper construction of the agreements with the city of Ottawa and the village of Hintonburg, the statutes relating to the Ottawa Electric Railway Company and the relevant provisions of the Railway Acts, the Board was right in disallowing the tariff of the company filed providing for payment of additional fare for carriage upon the extension from Holland avenue, notwithstanding that the Board has found as a fact that the company did not require additional revenue.

(2) Also, whether upon the proper construction of the said agreements and statutes for the purpose of computing the toll to be charged to passengers upon the said extension the point of commencement of the said extension should be considered to be at Holland avenue or at the former westerly limit of the village of Hintonburg, now the city of Ottawa.

(3) Has the Board the right to treat the company's operations as a whole and continue the existing tariff; or must the Board permit the filing of tariffs on a mileage basis covering services on the Britannia line without reference to the larger part of the system covered by municipal agreements?

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28219.

In the matter of the application of the Quebec, Montreal, and Southern Railway Company, hereinafter called the "Applicant Company," for authority to remove its regular agent at Boucherville station, in the county of Chambly, and province of Quebec.

File No. 4205.180.

FRIDAY, the 4th day of April, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of an inspector of the Board, concurred in by its Chief Operating Officer,—

It is ordered: That the applicant company be, and it is hereby, granted leave, pending further Order, to remove the regular station agent at Boucherville, in the county of Chambly, and province of Quebec, subject to and upon the condition that a caretaker be appointed to see that the station is kept clean, and, when necessary, heated and lighted for the accommodation of passengers on the arrival and departure of trains, and to care for less-than-carload freight and express matter.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28210.

In the Matter of the application of the corporation of the city of Galt, in the province of Ontario, hereinafter called the "applicant," for an Order directing the Grand Trunk Railway Company to construct and maintain suitable gates at the point where its railway crosses Walnut street, in the said city.

File No. 26765.52.

SATURDAY, the 5th day of April, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner*,A. C. BOYCE, K.C., *Commissioner*.

Upon hearing the application at the sittings of the Board held in Galt, the 25th day of June, 1918, in the presence of counsel and a representative for the applicant and counsel for the Canadian Pacific and Grand Trunk Railway Companies, and what was alleged; and upon the report and recommendation of the chief Engineer of the Board, the Grand Trunk Railway Company consenting,—

It is ordered: That the Grand Trunk Railway Company be, and it is hereby, directed to keep its cars back two car lengths from the south side of Walnut street while standing on the crossing in question.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28214.

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "applicant company," for authority to remove the regular agent at Amazon station, in the province of Saskatchewan.

File No. 4205.177.

SATURDAY, the 5th day of April, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner*.A. S. GOODEVE, *Commissioner*.A. C. BOYCE, K.C., *Commissioner*.

Upon reading what is filed in support of the application, no objection being offered by the village of Amazon, although notified of the proposed removal as appears by letter from the applicant company to the Secretary of the Board, dated February 3, 1919, filed,—

It is ordered: That the applicant company be, and it is hereby, granted leave, pending further Order, to remove the station agent at Amazon, in the province of Saskatchewan, subject to and upon the condition that a caretaker be appointed to keep the station clean, and, when necessary, heated and lighted for the accommodation of passengers on the arrival and departure of trains and to care for less-than-carload freight and express matter.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28221.

In the matter of the application of residents of the Hamlet of Gilroy, Sask., for an Order directing the Grand Trunk Pacific Railway Company to provide a suitable station at that point.

File No. 25328.1.

TUESDAY, the 8th day of April, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner*,

A. S. GOODEVE, *Commissioner*.

A. C. BOYCE, K.C., *Commissioner*.

Upon reading what is filed in support of the application and the report and recommendation of an inspector of the Board, concurred in by its Chief Operating Officer, the Grand Trunk Pacific Railway Company consenting,—

It is ordered: That the Grand Trunk Pacific Railway Company be, and it is hereby, directed to erect a standard "A" station building at Gilroy, in the province of Saskatchewan, the work to be completed by the 1st day of September, 1919.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28223.

In the matter of the application of the Hyas Board of Trade and ratepayers of the municipality of Clayton, No. 333, in the vicinity of Hyas, Sask., for an Order directing the Canadian Northern Railway Company to provide proper station accommodation at Hyas.

File No. 20560.

THURSDAY, the 10th day of April, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner*.

A. S. GOODEVE, *Commissioner*.

A. C. BOYCE, *Commissioner*.

Upon reading what is filed in support of the application on behalf of the Canadian Northern Railway Company, and upon the report and recommendation of an Inspector of the Board, concurred in by its Chief Operating Officer,—

It is ordered: That the Canadian Northern Railway Company be, and it is hereby, directed to erect a third-class station building at Hyas, in the province of Saskatchewan; the work to be completed not later than the 1st day of October, 1919.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28226.

In the matter of the application of P. N. Tait on behalf of the residents of Mille Roches, in the province of Ontario, for an Order directing the Grand Trunk Railway Company to provide better station accommodation at that point.

File No. 5769.97.

THURSDAY, the 10th day of April, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the Grand Trunk Railway Company, and upon the report and recommendation of an Inspector of the Board,—

It is ordered: That the Grand Trunk Railway Company be, and it is hereby, directed to erect a suitable station building at Mille Roches, in the province of Ontario; detail plans of the proposed structure to be filed with the Board for approval not later than the 15th day of May, 1919, and the work to be completed by the 1st day of September, 1919.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28225.

In the matter of the application of the Ottawa Gas Company, hereinafter called the "applicant company," for cancellation of the demurrage charges made by the Grand Trunk Railway Company on cars loaded with coal consigned to the applicant company at Ottawa.

File No. 1700.234.21.

FRIDAY, the 11th day of April, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the Grand Trunk Railway Company and the Canadian Car Demurrage Bureau, and the report and recommendation of the Chief Traffic Clerk of the Board; and upon its appearing that the influenza epidemic had a material bearing on the accrual of demurrage,—

It is therefore declared: That the applicant company shall be required to pay the Grand Trunk Railway Company the sum of \$3,058.50 only, as demurrage charges on the cars in question.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 25232.

In the matter of the complaint of the Pacific Coast Shippers' Association, on behalf of the Abbotsford Timber and Trading Company, Limited, against a rate of 9 cents per 100 pounds on lumber, in carloads, charged by the Canadian Pacific Railway Company from Abbotsford to Vancouver, both in the province of British Columbia.

File No. 26615.11.

MONDAY, the 14th day of April, A.D. 1919.

SIR HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Upon its appearing that the said Canadian Pacific Railway Company, by its tariff C.R.C. No. W2248, published and filed what is therein described as a competitive rate of 5 cents per 100 pounds on lumber in carloads from Huntingdon, B.C., to Vancouver, and in the same tariff a mileage rate of 9 cents per 100 pounds from Abbotsford, B.C., Abbotsford being intermediate between Huntingdon and Vancouver,—

It is declared: That the movement from Huntingdon to Vancouver not being competitive within the meaning of the Railway Act, the lawful rate on lumber, in carloads, from Abbotsford to Vancouver, over the line of the Canadian Pacific Railway Company, on the 14th of June, 1917, when the shipment complained against was made in car 122950, was 5 cents per 100 pounds, on which basis reparation is hereby authorized.

H. L. DRAYTON,
Chief Commissioner.

CIRCULAR No. 176.

Weighing of Cars.

File 8799.13.

April 9, 1919.

The Board has had its Operating Department for some time past investigating the methods and practices of the railways under its jurisdiction in connection with the manner in which cars are placed and weighed on track scales. Tests have been made of the scales at various points on the different railways by weighing cars when standing free, uncoupled at both ends, coupled on one end, and, when the deck of the scale permits, coupled at both ends.

The report and recommendations of the Board's Chief Operating Officer as the outcome of these inquiries is as follows:—

“The best results are obtained where one person is employed to supervise and check the weighing of cars and that person should be ‘sworn in.’ This person need not be engaged as a weighmaster, exclusively, but a suitable person already working in some position on the staff should be instructed by the company's general officer having jurisdiction, and this person should have the power to instruct the men how to place the cars and supervise and take the record himself from the scale beam.

"Each company, in its own interests, should go over the facilities to see that it gets the best arrangement for protecting the scales from the severe winter conditions, water, etc."

The Board desires to have the comments of the various railway companies upon the foregoing recommendations, together with a concise statement as to the practice now followed by each railway, with a view to considering and adopting some uniform system which will work satisfactorily to both the shippers and the railways.

By Order of the Board,

A. D. CARTWRIGHT,
Secretary.

The Board of Railway Commissioners for Canada



Judgments, Orders, Regulations, and Rulings

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OTTAWA, March 28, 1919.

Td. 10867.

Adolph Lumber Company vs. G.N.R. Log Rates, Dorr, B.C., to Baynes, B.C.

Heard at Nelson, February 21, 1919.

File 25248.

REPORT OF CHIEF TRAFFIC OFFICER.

Concurred in by the Chief Commissioner and Commissioners Goodeve and Rutherford.

Dorr and Baynes are stations, 10.6 miles apart, on the Crow's Nest Southern division of the Great Northern Railway, which runs from Michel, B.C., to Gateway, B.C., where connection is made with the Great Northern's United States system. Baynes is also on the Waldo sub-division of the C.P.R.

Complaint is made that the Great Northern's rate on logs from Dorr to Baynes and the minimum load are both excessive.

The first tariff filed as effective June 3, 1916, made the rate \$1.40 per 1,000 feet and the minimum 6,000 feet per car.

On the 26th June, 1917, the minimum load was raised to 8,000 feet. The Board's judgment in the *15 Per Cent Case* increased the rate to \$1.55; and the Order in Council, effective August 18 last, further increased it to \$1.80. The minimum load has remained 8,000 feet.

Complainants claim that owing to the war tax they pay on their lumber product (as to which, of course, they are on the same footing as other shippers) their logs should be exempted from the Dominion-wide rate increase of last August; and, furthermore, ask a reduction of the rate to \$1 per 1,000 (or 40 cents less than their original rate), and of the minimum to 7,000 feet; also reparation to this basis on all their logs moved during 1918.

The complaint is supported almost entirely by comparisons, not only with other rates of the Crow's Nest Southern, but with the log rates and minimum of the C.P.R. The Board has enunciated the principle that the rates of another railway are not criteria of a carrier's own rates, unless the latter are shown to be themselves unreasonable.

As regards the minimum the evidence shows that the railway company has, at the Adolph Lumber Company's request, set aside eighteen 43-foot cars for this particular service. The comparison, which I will show to be ineffective, is with the 7,000-foot minimum of the C.P.R.; but although the latter company has flat cars of 41 and 41½-foot dimensions, it has no 43-foot flats. Its tariff rule 7 (C.R.C. No. W. 2397) pro-

vides, however, that unless specified to the contrary (and the 7,000-foot minimum is not so specified) the minima for the commodities included in the tariff are to be understood to apply only to cars of standard length, which is 36 feet 10 inches for flats; 5 per cent per foot being added for longer cars. This reservation would make the Canadian Pacific's minimum for 43-foot cars, if the company secured them, at least 9,000 feet. Moreover, the four C.P.R. rates to Wardner, referred to by complainants, are plainly stated in supplements 12 and 13 to apply only on logs in owner's cars, moved in lots of ten cars per trip per day. On railway-owned cars the rate from Fenwick is \$1.90 per 1,000 feet, instead of \$1.60 as stated in the complaint; from Fort Steele, \$1.90, instead of \$1.80; from Bridges Spur, \$2.20, instead of \$1.80; and from Wassa, \$2.50, instead of \$1.80.

The necessity, in the interests of the carriers and public alike, and within reasonable bounds, for complete utilization of railway equipment needs only to be mentioned. Complainants say that in 1918 the G.N.R. handled 1,127 carloads of their logs, 679 (60 per cent) of which carried under 8,000 feet; and that of these, 261 (23 per cent of the whole) carried under 7,000 feet; and they give the cause as variations in the sizes of the logs.

On the other hand, Mr. Smith, for the G.N.R., testified that in the same year "the average load, according to the scale sheets furnished by the shipper and not verified by the railway company, was 7,801 feet."

Mr. Smith filed exhibits showing the following scalings in May and June, 1917, for seven individual cars loaded on the same section: 8,984, 8,173, 8,018, 8,641, 8,837, 7,253 and 9,219 feet. The ownership of one car is not shown; six were 43-foot cars; the underlined was a 40-footer.

Four of these cars were loaded at Gateway where Mr. Adolph says an entirely different timber is shipped, namely, fir; whereas the Dorr timber is pine. Then he says that "larch fir is entirely a different timber from pine and will not load up as big on the car, because the logs are small, and the timber we hauled from Gateway was entirely pine, and all very large timber permitting of heavy loads." Apparently, there is confusion, if not contradiction, here, or Mr. Adolph has not been correctly reported.

As regard the particular rate itself; it is a common and legitimate railway practice to make reductions from their ordinary rates on such raw material as grain, logs and pulpwood, in return for the second haul of the finished products. The G.N.R. rate is not so qualified; whereas the rates of the C.P.R. are specifically published as for sawing and reshipment. The C.P.R., therefore, counts on receiving back approximately 100 per cent of the product in the form of lumber for long haul carriage to the prairies; while Mr. Smith's estimate of such reshipments over his own road is 2 per cent. Of course, some of the Baynes product may go out over either line, regardless of the log movement. Of the 1918 movement of 1,127 log loads mentioned above, Mr. Adolph says 115, Mr. Smith 112, cars of lumber were received by the G.N.R., which the former gentleman estimates to equal 30-35 per cent of log contents; measured by carloads it would be 10 per cent. The inference suggests itself that the greater portion of the lumber from the logs on which the G.N.R. is asked to reduce its rate moves out over the C.P.R.

Very little indeed was said about the vital factor of weight hauled, which, after all, must be the test of the rate. It was but once mentioned in a casual way when (p. 6196) Mr. Adolph remarked that it seemed rather strange to him that 8,000 feet, weighing not more than 6 pounds to the foot, should weigh 88,000 pounds. The minimum of 8,000 feet at \$1.80 yields \$14.40 per car, and taking Mr. Adolph's estimate of 6 pounds, this load would weigh 48,000 pounds, producing a rate per 100 pounds of exactly 3 cents.

Neither the G.N.R. nor the C.P.R. in the west has an open unrestricted mileage log schedule, their rates being published only for specific movements. In Eastern Canada, where the general level of rates is lower than in the West, particularly in

British Columbia, the railways have such extended schedules, both unrestricted and restricted, for reshipments. The former makes the rate for the Dorr-Baynes distance $6\frac{1}{2}$ cents, with 5 cents as the minimum for special movements; the latter $4\frac{1}{2}$ cents, or $1\frac{1}{2}$ cent greater than the 3-cent rate as above produced.

Complainants have since written the Board, under date of March 12, giving a mileage list of rates charged by the Kettle Valley Railway. This list was first published in Tariff C.R.C. 134, January 1, 1918. This tariff was superseded on August 12 by C.R.C. 186, which although it quotes the Order in Council as its authority, actually repeats the rates of the former schedule; error or inexperience on the part of the Kettle Valley people probably being the reason. These rates are quoted for sawing and reshipment, and had they been increased as ordered, they would be, for similar distances, precisely the same as the present specific rates of the C.P.R. This new submission, therefore, does not help complainant's case.

Contrast is made with the lumber rate between the same two stations. It is $5\frac{1}{2}$ cents per 100 pounds, not $6\frac{1}{2}$ cents as stated. The lumber minimum has to be governed by box-car limitations. The Great Northern's tariff minimum is 40,000 pounds. Instead of figuring on the universal basis of weight of lumber carried, the complainant compares a carload of the product with the quantity of raw material required to produce it—an entirely new and impracticable transportation theory.

In the other illustration, namely, hay, the rate is $6\frac{1}{2}$ cents, and the tariff minimum 10 tons, or \$13 per car, which is but \$1.40 per car less than paid for 24 tons of logs. Hay, of course, is a very light product requiring box cars. The log rate might be compared favourably with a number of other low-grade articles of heavy loading.

I do not consider that complainants have proved their case, and beg to recommend accordingly.

Respectfully submitted.

J. HARDWELL,
Chief Traffic Officer.

ORDER No. 28289.

In the matter of the complaint of the Adolph Lumber Company, of Baynes Lake, British Columbia, hereinafter called the "complainant," against the rate charged by the Great Northern Railway Company on shipments of logs from Dorr, B.C., to Baynes Lake, B.C.

File No. 25248.

FRIDAY, the 2nd day of May, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Nelson on the 21st day of February, 1919, the complainant and the Great Northern Railway Company being represented at the hearing, and what was alleged; and upon reading the further written submissions filed on behalf of the complainant and on behalf of the Great Northern Railway Company, and the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the complaint be, and it is hereby, dismissed.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28239.

In the matter of the application of the Grand Trunk Railway Company of Canada for an Order amending the Order of the Railway Committee of the Privy Council, dated November 2, 1897, requiring the crossing of Bay street by the Grand Trunk and Canadian Pacific Railways in the city of Toronto be protected by gates and watchman, to provide for the division of responsibility for accidents due to the negligence of the watchmen at the said crossing.

File No. 4177, Case No. 844.

SATURDAY, the 12th day of April, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application, and the consent of the Canadian Pacific Railway Company filed; and upon the report and recommendation of the Assistant Chief Engineer of the Board,—

It is ordered and declared as follows:—

1. That the said gates be operated by watchmen appointed by the railway companies, and, in case of any disagreement between them, by the Board as and for the said companies.

2. That such watchmen act in each instance for and on behalf of the railway company the passing of whose trains or engines over the said crossing requires the operation of the gates; and that, in case any accident should happen at the crossing in question, owing to the running of a train or engine thereover, the company operating such train or engine shall alone be liable for any negligence of the watchman then in charge of such gates, and shall indemnify and save harmless the other company from all loss, charges, or damages in respect thereof.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28252.

In the matter of the application of the residents of Portland, Ont., for an Order directing the Canadian National Railways to restore the train service in effect prior to November, 1918, and give Portland direct communication with Ottawa and Toronto by stopping its trains Nos. 5 and 6 regularly at Portland.

File No. 28983.

SATURDAY, the 19th day of April, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the Canadian National Railways; and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the Canadian Northern Railway Company be, and it is hereby, directed to stop its trains Nos. 5 and 6 regularly at Portland, Ont.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28265.

In the matter of the application of the Canadian National Railways, on behalf of the Canadian Northern Railway Company, for an Order varying the terms of the Order of the Board No. 27623, dated September 3, 1918, requiring the Canadian Northern Railway Company to stop its local trains Nos. 7 and 8, on flag, at Clarence, Ont.

File No. 22589.20.

MONDAY, the 28th day of April, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the Order of the Board No. 27623, dated September 3, 1918, be, and it is hereby, amended to provide that the Canadian Northern Railway Company stop its trains Nos. 5 and 6, on flag, at Clarence, Ont., instead of its trains Nos. 7 and 8 as directed by said Order; trains Nos. 7 and 8 to stop at Clarence, on flag, on Sundays only.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28268.

In the matter of the application of the residents and ratepayers of the village of Corinne, Sask., hereinafter called the "applicants," for an Order directing the Canadian Pacific Railway Company to erect a new station at that point.

File No. 23767.

MONDAY, the 28th day of April, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Regina on the 1st day of March, 1919, in the presence of counsel and a representative for the Canadian Pacific Railway Company, no one appearing for the applicants; and upon the report and recommendation of an Inspector of the Board, and reading the further written submissions filed on behalf of the Canadian Pacific Railway Company,—

It is ordered: That the Canadian Pacific Railway Company be, and it is hereby, directed forthwith to provide a proper station building at Corinne, in the province of Saskatchewan; detail plans of the proposed structure to be filed with the Board for approval.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28274.

In the matter of the application of P. C. Roberts, on behalf of the residents of Clair, in the province of Saskatchewan, for an Order directing the Canadian Northern Railway Company to provide better accommodation and appoint a station agent at that point.

File No. 13970.

TUESDAY, the 29th day of April, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the Canadian Northern Railway Company, and upon the report and recommendation of an Inspector of the Board, concurred in by its Chief Operating Officer,—

It is ordered: That the Canadian Northern Railway Company be, and it is hereby, directed to appoint a caretaker at Clair, Sask., whose duty it shall be to see that the station is kept clean and, when necessary, heated and lighted for the accommodation of passengers on the arrival and departure of trains, and to care for less-than-carload freight and express matter.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28278.

In the matter of the application of residents of Runnymede, in the province of Saskatchewan, for an order directing the Canadian National Railways to appoint a station agent at that point.

File No. 4205.176.

TUESDAY, the 29th day of April, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon reading what is filed in support of the application, and on behalf of the Canadian National Railways; and upon the report and recommendation of an Inspector of the Board, concurred in by its Chief Operating Officer,—

It is ordered: That the Canadian Northern Railway Company be, and it is hereby, directed to appoint a caretaker at Runnymede, in the province of Saskatchewan, whose duty it shall be to see that the station is kept clean, and, when necessary, heated and lighted for the accommodation of passengers on the arrival and departure of trains, and to care for less-than-carload freight and express matter.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28290.

In the matter of the application of T. M. Kelly, of Sebringville, Ont., on behalf of certain of the farmers living in the vicinity of Sebringville, for an Order directing the Grand Trunk Railway Company to erect a station on the line between the townships of Ellice and Logan, in the county of Perth, and province of Ontario, at a point approximately midway between Sebringville and Mitchell on the line of the Grand Trunk Railway Company between Stratford and Goderich.

File No. 29087.

TUESDAY, the 29th day of April, A.D. 1919.

SIR HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, and on behalf of the Grand Trunk Railway Company, and the report and recommendation of an Inspector of the Board; and upon its appearing that facilities for accommodating all the traffic of the district are furnished by the stations of Sebringville and Mitchell, which are not an unreasonable distance apart,—

It is ordered: That the application be, and it is hereby, dismissed.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28272.

In the matter of the complaint of the Board of Trade of Balcarres, in the province of Saskatchewan, hereinafter called the "complainant," against the condition of the ladies' waiting room in the station of the Canadian Pacific Railway Company at that point.

File No. 19798.

WEDNESDAY, the 30th day of April, A.D. 1919.

SIR HENRY L. DRAYTON, K.C., *Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Regina on the 1st day of March, 1919, in the presence of counsel for the Canadian Pacific Railway Company, the complainant being represented at the hearing, and what was alleged; and upon the report and recommendation of an Inspector of the Board, and reading the further written submissions filed on behalf of the Canadian Pacific Railway Company,—

It is ordered: That the Canadian Pacific Railway Company be, and it is hereby, directed to provide additional station accommodation at Balcarres, in the province of Saskatchewan, either by the construction of a separate and distinct ladies' waiting room or by providing such further accommodation for the residence of the station agent as will permit of the room previously set aside for a ladies' waiting room being used for that purpose.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28275.

In the matter of the application of the Board of Trade of Prelate in the province of Saskatchewan, for an Order directing the Canadian Pacific Railway Company to provide a new station at that point.

File No. 22837.

WEDNESDAY, the 30th day of April, A.D. 1919.

SIR HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, and on behalf of the Canadian Pacific Railway Company; and upon the report and recommendation of an Inspector of the Board, concurred in by its Chief Operating Officer, the Canadian Pacific Railway Company consenting,—

It is ordered: That the Canadian Pacific Railway Company be, and it is hereby, directed to construct one of the main bodies of its standard class "A 2" stations as an addition to the present freight shed at Prelate, in the province of Saskatchewan, and to arrange to provide a properly constructed heated room for the handling of perishable freight and express matter; the work to be completed not later than the first day of September, 1920.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28276.

In the matter of the application of the farmers of Katrime, Man., and vicinity, for an Order directing the Canadian Northern Railway Company to provide proper station accommodation and a stock yard at Katrime.

File No. 29198.

WEDNESDAY, the 30th day of April, A.D. 1919.

SIR HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon reading what is filed in support of the application, and the reports and recommendations of an Inspector of the Board, and its Chief Operating Officer; the Canadian Northern Railway Company consenting,—

It is ordered: That the Canadian Northern Railway Company be, and it is hereby, directed to construct one of its standard freight and passenger shelter stations and a one-car stock pen and shed at Katrime, in the province of Manitoba; the work to be completed not later than the 31st day of July, 1919.

H. L. DRAYTON,
Chief Commissioner.

JUN 1 1918

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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No. 5

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"Re" Bell Telephone Company's application for Increase in Rates.

Case 955.

JUDGMENT.

Mr. COMMISSIONER McLEAN:

Under date of August 26, 1918, the following communication was filed by the Bell Telephone Company:—

"We have filed to-day a revised tariff sheet, C.R.C. No. 3711, superseding C.R.C. 3559, being a revised computed toll tariff for night rates and overtime charges, effective October 1, 1918.

"These rates are applicable on intra-company business in various parts of our territory, and apply to particular person toll traffic only.

"The charges will be based on air-line distance between exchanges, and covers an initial talking period of three minutes, and one-minute periods for overtime, with an allowance for timing of 15 seconds.

"The basis of overtime charges will be for each overtime minute, one-third of the initial rate to the next lower multiple of 5 cents.

"The basis of overtime charges at present is one-third the initial rate, except where the rate is over \$1. Overtime averages slightly less than one-third the initial rate. We have removed this exception and adopted the standard in use generally by telephone companies.

"Night rates that are now effective from 6 p.m. to 6 a.m. will be changed and made effective from 8.30 p.m. to 6 a.m. daily.

"The basis of the night rate charges are for service during night rate periods, 60 per cent of the initial day rate from 8.30 p.m. to 11.30 p.m., and from 11.30 p.m. to 6 a.m., the night rate will be 40 per cent of the day rate, to the nearest multiple of 5 cents.

"The charges for night rates at present are 50 per cent of the day rates from 6 p.m. to 6 a.m.

"As these rates are a revision in charges, reducing some and increasing others, we are filing same 30 days previous to the day effective.

"We have found a heavy congestion of traffic resultant upon the 50 per cent discount of the day rate, starting at 6 p.m. and lasting throughout the early evening. To ameliorate this somewhat we wish to defer the hour that night rates will be effective until 8.30 p.m., and to increase the tariff by 10 per cent of the night rate until 11.30 p.m., and reduce the night tariff 10 per cent after 11.30 p.m., to improve the traffic conditions. This will be appreciated by the subscribers and patrons of our service."

As shown by the application, the period during which the night rates were applicable was reduced by 2½ hours, and it was stated this was done with a view to lessening

congestion. The company was asked to furnish information bearing upon the congestion which it was said would be eliminated thereby. Thereafter a series of exhibits was filed by the company, based on three days' count of business in Toronto, Montreal and Ottawa during the latter part of July, 1918, the figures being for both day and night hours. Detail was given as to the completed calls and uncompleted calls. From this it appeared that 35.5 per cent of the calls during night hours were uncompleted, as against 20.9 per cent for the day hours.

A tabulation for the period in question showed that 8,219 calls were recorded between the hours of 6 p.m. and 9 p.m., as compared with 9,682 calls between 9 a.m. and 12 noon, the latter period being the peak load of the day both for business and social activities. This material is based on a check of three average days during the months of May and July, 1918, at the Hamilton, Toronto, Montreal, Ottawa, Quebec and London offices. A chart submitted showed that between the hours of 6 p.m. and 8.30 p.m. there were almost as many calls handled as during the heaviest period of the day, viz., between the hours of 9 a.m. and 12 noon.

An exhibit covering the originating calls for Montreal, Toronto, Ottawa, Hamilton, London, Quebec and Windsor, based on a record of originating calls for one day per month from August, 1917, to July, 1918, inclusive, showed that of 157,128 calls originated day and night, 113,903, or 72.5 per cent, represented the originating calls from 6 a.m. to 6 p.m. The night call business, amounting to 43,225, was divided as follows:—

Hours.	Calls.	Per cent of Total Calls.
6 p.m. to 8.30 p.m.	32,064	20.4
8.30 p.m. to 11.30 p.m.	10,557	6.7
11.30 p.m. to 6 a.m.	604	0.4

It was contended by the company that on the material submitted it was apparent there was serious congestion in the traffic handled over the company's long distance lines between the hours of 6 p.m. and 8.30 p.m.

At the direction of the Board, the company served its application on the cities to whose rate experience reference had been made in the exhibits as filed. Before the matter came to hearing, the Board was advised that further matters affecting rates were pending and it, therefore, seemed best to have the matter stand so that all matters involved might be heard at the same time.

Under date of October 15, 1918, the Bell Telephone Company made an application for increase of rates, details of which are set out below, there being incorporated in the application the provisions as to long-distance rates above referred to. In support of the application, the company said:—

"The foregoing increases and changes in and additions to existing telephone tolls are necessary in order to permit of the applicant meeting the greatly increased cost of furnishing telephone service to the public, due principally to increased cost of labour and materials and other elements of cost affecting public utilities companies."

"1. An increase of twenty per cent (20 per cent) on all tolls, rates and charges for exchange telephone service and charges incidental thereto, including charges for extra facilities or additional equipment, except the following rates and charges mentioned in the general exchange tariff, C.R.C. No. 3100.

"Section 8.—Construction and installation charges.

"Section 16.—Moving charges.

"Section 18.—Sheet 2—hotel-message rates—local messages only.

"Section 19.—Public telephone service.

"2. All tariffs of tolls for long distance service filed with the Board to be replaced by the following:—

"*Basis of Measurements.*—Actual air-line mileage.

"*Minimum Initial Rate.*—Ten cents for distance of 0 to 8 miles and five cents for each additional 8 miles or fraction thereof.

"Initial Period.—Three minutes.

"Overtime Period.—One minute.

"Allowance for Timing.—Fifteen seconds.

"Basis of Overtime Charges.—Each overtime minute charged for at one-third initial rate to next lower multiple of five cents.

"Night Rates.—Effective from 8.30 p.m. to 11.30 p.m., 60 per cent of the initial day rate and from 11.30 to 6 a.m. 40 per cent of the initial day rate to the nearest multiple of five cents.

The basis of overtime charges will be for each overtime minute one-third of the initial night rate to the next lower multiple of five cents.

EXAMPLE.

TOLL RATE SCHEDULE AND TABLE OF COMPUTED TOLLS.

Distance Steps, air-line miles—		Initial Rate, Three Minutes.	Overtime Rate, One Minute.
0 to 8 miles inclusive...	...	0.10	0.03
Over 8 miles up to and including 16 miles...	...	0.15	0.05
" 16 " " " 24 " " " "	...	0.20	0.05
" 24 " " " 32 " " " "	...	0.25	0.05
" 32 " " " 40 " " " "	...	0.30	0.10
" 40 " " " 48 " " " "	...	0.35	0.10
" 48 " " " 56 " " " "	...	0.40	0.10
" 56 " " " 64 " " " "	...	0.45	0.15
" 64 " " " 72 " " " "	...	0.50	0.15
" 72 " " " 80 " " " "	...	0.55	0.15
" 80 " " " 88 " " " "	...	0.60	0.20
" 88 " " " 96 " " " "	...	0.65	0.20
" 96 " " " 104 " " " "	...	0.70	0.20
" 104 " " " 112 " " " "	...	0.75	0.25

NOTE.—To compute charges for service exceeding one hundred and twelve miles apply the above rates for initial period and overtime.

"TARIFF REGULATIONS.

"Appointment Service.—Furnished without charge.

"Regulations Governing Messenger Service.—Messenger service furnished at cost.

"Reversal of Toll Charges.—Toll charges may be reversed on guarantee of payment by person called.

"3. A charge to be known as 'service connection charge.' Service connection charges shall be collected from all applicants for new or additional service at the time of application and before such new or additional service is established.

"Service connection charges shall apply to all classes of service and each class separately for which the company has a regular separate established rate and the amount of the service connection charges shall be determined by the amount of the regular established rate in accordance with the terms of the general exchange tariff C.R.C. No. 3100.

"Except as may be otherwise provided, the following service connection charges shall apply:—

"Where the rate is:—

Per Annum—	Per Month.	Service Connection Charge will be
\$15 00 or less.	\$1 25 or less.	\$2 00
30 00 "	2 50 "	4 00
48 00 "	4 00 "	5 00
Over \$48.	Over \$4.	6 00

"4. A charge of \$2 for change of name.

"5. Charges for moving telephone stations and other equipment as set forth in existing tariffs of tolls to be revised to read as follows:—

"Station moves to other location in same room, \$2.

"Station moves to different location in same building and premises, \$3.

"Miscellaneous equipment moved at same time as station with which it is associated, no charge.

"Moved independently of station with which it is associated to another location in same room, \$2.

"To different room in same building or premises, \$3.

"Private Branch exchange switchboard moves to different location in same premises, at actual cost.

"Inter-communicating system or any portion thereof moves to different location in same premises, at actual cost.

"Station and equipment moves to other premises, service connection charges shall apply.

"6. Tariffs of tolls setting forth the forgoing increases and changes in and additions to existing tolls are herewith filed with the Board for approval.

"7. All increases and changes in and additions to telephone tolls to be effective from and after the twentieth (20th) day of November, 1918."

In the interim judgment of the Chief Commissioner, dated October 28, 1918, dealing with the application of the solicitors for the city of Toronto for an Order giving Messrs. Clarkson, Gordon & Dilworth, chartered accountants, access to the books of the Bell Telephone Company in order to ascertain whether the requested increase was warranted, it was stated that the request made by the city was in ease of the proper solution of the question; but it was suggested that if the matter was set down for discussion it could then be ascertained whether a unified examination on behalf of all the municipalities concerned was feasible.

By the Board's Order No. 27848 of November 12, 1918, the company was directed to furnish the Board with specified particulars.

The request of the city of Montreal for extended particulars was set down for hearing on November 22, 1918.

Thereafter on December 5, 1918, an interim judgment of the Chief Commissioner issued dealing with the amended and extended particulars to be furnished. These are specified in the Board's Order No. 27912 of December 6, 1918.

In the interim judgment above referred to, the following language was used by the Chief Commissioner as defining the scope of the issue:—

"There has been an immense increase in the cost of materials since the last detailed investigation was held by the Board, which covered the Montreal territory and took place in 1911. At the time of that investigation it was found that the company made but 8.28 per cent on its Montreal investment, and the rates were, therefore, sustained.

"In all probability, were an appraisal taken to-day it would be found that the value had increased at least 40 per cent, and if Montreal be taken as a typical point (the result would be, of course, not absolutely the same in all municipalities) the general result would be an increase of 40 per cent in telephone rates.

"It may be that to-day's high costs will be maintained for some considerable time; that labour charges and that class of material in which labour represents a large percentage of the cost will not materially decrease. On the other hand it is more than possible that the costs of installation and the values of plants will materially decrease.

"In my opinion, should it be found necessary to increase the company's rates, they should be increased subject to the Board's further Order and to the further provision, in the meantime, that such data be collected and valuations made as will enable a proper telephone rate to be determined when conditions are ascertained to be constant.

"I would, therefore, give effect to the spirit of the municipality's application and provide merely for temporary increases if necessary. In my view, however, their duration ought also not to be fixed. They should remain in effect until operating costs and plant values become normal, when the permanent rates ought to be considered.

"I would treat the application as current, so that the onus of showing what the proper rate was would rest upon the company, and in order to bring about this result would grant temporary increases if found necessary, as already stated, until further Order."

II.

As summarized by Mr. MacFarlane (evidence, vol. 289, pp. 3828-99), the company relies on the following factors in support of its application:—

- (1) Increased cost of materials;
- (2) " " " labour;
- (3) " " " ordinary expenses of management;
- (4) " " " raising money;
- (5) " " " for taxes and the various items entering into the business.

That material costs have been on a high level during the last few years is admitted. In some particulars, as is set out in Mr. Winter's evidence in connection with the exhibits filed by Mr. Brunskill, there have been reductions since the company's exhibits as to prices were prepared, but, in general, the level is still high. The company, in its statement No. 1, as explained in evidence by Mr. Sise (evidence, vol. 292, pp. 407-408), shows that a representative list of the principal materials purchased in 1917 would on 1918 prices have cost \$2,255,090 as compared with the 1913 price of \$1,420,170, an increase of \$834,920, or 58 per cent increase.

As explained by Mr. MacFarlane in the same connection, some slight errors occurred in the preparation of the list through confusion of the description of the materials. The revised statement as given above reduces the figures, giving a percentage increase of 58.79 as compared with 68.12 in statement No. 1.

It may be noted that in terms of the wholesale index number of the Department of Labour, it required in 1918 \$2.05 to purchase the same quantity of goods as could have been purchased in 1913 for \$1. The index number for 1917 is 237, as compared with 278.3 for 1918. The company set out as showing the course of increase in cost of labour and materials that there was "an increase of 23.2 per cent in salaries and wages of permanent employees, 51 per cent in salaries and wages of plant employees of one class, and of 76 per cent in operating charges in these three years." This refers to the detail for the period of 1915-1918, as set out in the company's memorandum of particulars, which is referred to as statement No. 1.

Statement Q, as contained in the exhibit of Price, Waterhouse & Company (exhibit 16), shows the following detail from the company's books regarding the payroll expenditures for the general, commercial and traffic departments, for the full years 1915-1917 and for 1918 (11 months):—

1915.. . . .	\$2,652,951 88
1916.. . . .	2,987,855 27
1917.. . . .	3,661,286 15
1918 (for 11 months)	3,973,236 19
1918 (computed)	4,334,639 40

The statement is not complete, as complete records were not available.

Based on the detail as set out in the company's statement No. 1, at p. 6, Price, Waterhouse & Company (exhibit 16) in their statements S and T, which are summarized in statement R, show an annual increase in wages for general, commercial, traffic, plant and engineering departments, amounting to \$1,455,586.

The following sets out the figures for "operations" for the months in question for 1917 and 1918:—

	1917.	1918.	Increase.
October..	\$ 412,156	\$ 514,000	\$102,844
November..	390,861	544,000	153,139
December..	400,292	549,000	148,708
Total..	<u>\$1,203,309</u>	<u>\$1,607,000</u>	<u>\$404,691</u>

On this basis, the increased wage bill, averaged over a year, would be \$1,619,164.

Mr. Sise (evidence, vol. 301, p. 3249) says that the statement for October, November and December above, as extracted from the company's statement No. 4, "is not a fair indication because of the fact that the increases were not in full effect in October, nor were they in full effect in November for that matter. The month of December is the only month we have given, figures for which show the full effect of the increased operating costs."

If December is taken as the test, then the increased cost wage of December, 1918, over 1917, averaged over a period of one year, would equal \$1,784,496.

As set out in statement No. 1, related to July 31, 1918, the situation is as follows:—

Total increase of salaries and wages to permanent employees since July 31, 1918..	\$1,455,586 44
Annual pay-roll prior to July 31 (approximate)..	6,283,330 20
Per cent increase, 23·2.	

As pointed out by the Chief Commissioner, practically what is being asked for is that to the extent that there is increased wage cost this should be reimbursed in the rates (evidence, vol. 289, p. 3976).

In addition to the wage costs in October-December, 1918, over the corresponding months of 1917, there are available in returns called for by the Board the wage costs in January and February, 1919, over those for the same months in 1918. As these returns are for two different periods of the year, they may be averaged as characteristic of the effect of the wage increase on a yearly basis. The increases as shown above, for October to December, are \$404,791. For January and February, the following detail is available:—

	1918.	1919.	Increase.
January..	\$411,571	\$ 530,065	\$118,494
February..	386,108	491,094	104,986
	<u>\$797,679</u>	<u>\$1,021,159</u>	<u>\$223,480</u>

The wage increase for the period concerned, which on the basis of days is 41·3 per cent of a year, amounts to \$628,271. Averaged on the basis of one year, this equals \$1,521,232.

III.

Deducting the items of operation, maintenance, depreciation and taxes in order to obtain the net operating revenue, the following details are available:—

Year.	Operating Ratio.	Net.
1913..	79·1	21·9
1914..	80·5	19·5
1915..	78·3	21·7
1916..	77·5	22·5
1917..	78·1	21·2
1918..	86·2	13·8

As has been pointed out, the increased costs especially concerned have accrued since October, 1918, and consequently the net for 1918 is obtained by averaging the poorer condition of the last three months of the year, when along with increased

revenue there were sharp increases in costs, with the better condition of the earlier months. Consequently the conditions, month by month, since October, should be considered. To ascertain whether these conditions have continued, the data for January and February, 1919, were obtained by the Board.

As bearing on the increases which have taken place in recent months:—

October, 1918, has an operating ratio of.....	100.1
November, 1918, " " "	92.864
December, 1918, " " "	94.969
January, 1919, " " "	95.120
February, 1919, " " "	91.12

In making any comparison between the months of January and February, it is to be noted that the totals for operation and maintenance are affected by the fact that February has 28 days as compared with 31 days in January. The items of depreciation and taxes are not apportioned according to the number of days in the month. The operating expense is proportioned to the number of days, while the operating earnings in respect of exchange revenue are not so proportioned. On the other hand, earnings from tolls are affected by the number of days.

IV.

The taxes of the company in 1913 were \$109,648. By 1917, they had increased to \$422,427—an increase of \$231,779, or 121 per cent. For the year 1918, they were \$534,256—an increase of 179 per cent.

The municipal taxes included in the 1918 total are \$420,000 as compared with \$290,152 in 1917. A considerable part of the increase in municipal taxes is due to a special tax of, in round numbers, \$107,000, imposed by the city of Montreal. This is a special tax of 5 per cent on the poles, wires, overhead cables, ducts, etc., of the company.

Exhibit No. 29, prepared by Messrs. Clarkson, Dilworth & Gordon and filed by Mr. Fairty, gives the item of business war tax, for the year 1918, at \$70,800.65. Colonel Gordon in his evidence (vol. 300, p. 3014) stated that he deducted this business profits tax from the expenses, first, because it was a temporary measure which, according to his understanding, would not be in force next year; and, second, because it was held by a great many people as a tax against the shareholders and not against operation. His position was that it should either be paid by shareholders or charged against surplus.

The company explained that the practice of the Department of Finance was that where the income tax was greater than the business profits tax, or vice versa, then whichever gave the larger amount was charged. In 1916, for example, there was a business profits tax of \$20,460.42 and this was included in the income tax. The question is whether the sum involved is to be treated as an expense or, on the contrary, something chargeable against the shareholders. The question is: What is the practice of the department? The commissioner of taxation of the Department of Finance advises the Board that:—

“The tax paid under the Income Tax Act of 1917 cannot be charged as an expense but must each year be paid out of surplus. In respect to corporations, it is a tax payable on net profits realized during a calendar year, or the fiscal year, in excess of \$3,000.”

V.

Exhibit 29, filed on behalf of the city of Toronto, takes the position that extraordinary relief due to influenza should not be charged against expenses but against reserves. The company's position is that this is really a wage expense. The amount involved is \$48,826.99. The opinion of Colonel Gordon (evidence, vol. 300, p. 3010) was that "as it was something out of the common and extraordinary, in my view it should be charged not against the expenses of the company but against all of their reserves."

The position was also taken that the item of war expenditure, amounting to \$108,047.10, should be deducted from expense and charged against reserve. This amount is concerned with payments kept up to employees of the company who went overseas. The company had, in the first instance, opened a war expense account as provision for these expenditures. This, as is pointed out at page 15 of statement No. 2, was, in the first instance, provided for by war expense account, which was transferred from contingent reserve. When the war was found to be of longer duration than was anticipated, it was re-transferred to contingent reserve.

Mr. Osler stated that a similar matter had been brought before the accounting division of the Interstate Commerce Commission concerned with telephone statistics. A letter of the American Telegraph and Telephone Company dealing with payments made to their employees called into the United States' military service during the troubles on the Mexican border was read into the record. The material portion of the letter is as follows:—

"Amounts so paid to employees during absence on military or naval service were charged to a sub-account under account 672, relief departments and pensions. The accounting treatment of these items as operating expense was based on the fact that the expenditure was in the nature of a relief payment to the families of our employees that had fostered a good spirit among our employees, both among those who had entered on the military service of the Government and those who continued in active service with the company, and that the expenditure was more than offset by the saving due to having available, at a later date, an experienced group of men who could be utilized by the Bell system without the expense and trouble of preliminary training for service."

It was represented by Mr. Osler that the practice of the company was upheld.

Some objection having been raised to the admissibility of this letter as evidence without there being an opportunity for cross-examination, the Board subsequently wrote the secretary of the Interstate Commerce Commission as follows:—

"My DEAR SIR,—

"In connection with your accounting branch and statistics returned as to telephone operation, no doubt questions have arisen within recent years both as to allowance of pay by telephone companies to their employees while they were absent on military duty, and also as to allowance of pay while employees were absent on account of influenza or other illness. Would you be good enough to inform me what has been your practice in regard to such occurrences. Are the sums involved chargeable, under your rulings, to the operating expenses of the year in which they accrue, or are they, on account of their being regarded as unusual or abnormal, chargeable to some reserve?

"Any specific information that you may be able to furnish in regard to your practice and rulings thereunder would be of service and would be much appreciated."

In reply the chief examiner of accounts of the commission advised the Board as follows:—

"Your communication of the 10th instant, directed to the secretary, relating to allowances of pay by telephone companies to employees while absent from duty, in the military service or by reason of illness, has been referred to me for attention.

"This office has ruled that the pay of employees of telephone companies while absent, on duty in the military or naval service of the United States, shall be charged to operating expense account No. 672, 'relief department and pensions,' in the month in which it accrues; that the pay of employees during illness shall be charged, as it accrues, to the account or accounts to which it would have been charged had such employees been on duty."

The Interstate Commerce Commission has developed an extensive system of telephone accounting forms and has given much attention to accounting practice. Such accounting forms have not been provided for in Canada.

Subject to the exception as to the matter of Dominion taxes, above referred to, the other items criticised are properly classed as expenses.

VI.

The net telephone operating earnings for the year 1918 were \$1,677,085. As indicative of the effect of the wage increases only \$124,425 of net earnings were obtained in the months of October to December, inclusive. In October, there was a deficit of \$7,856. The average net monthly earnings for January to September, 1918, were \$186,342, while for October to December the average was \$41,475. The net earnings in January to September, 1917, were \$1,639,187 as compared with \$1,552,653 for the same period in 1918. December, 1918, had net operating earnings of \$53,366, as compared with \$167,569 for the same month in 1917.

With an increase in telephone revenue of \$1,048,383, or 9.38 per cent over 1917, there was an increase in telephone expenses of \$1,517,338 or 16.8 per cent. There was at the same time a decrease in net telephone earnings of \$468,954, or 21.85 per cent.

As against the net telephone earnings of \$1,677,085, there were at the current rates \$1,440,000 of dividend and \$557,450 of interest charges, or a total of \$1,997,450. There is, however, the added item of non-operating revenue. This is given in the company's statement No. 2, for 1918, as \$374,687. Included in this is an item of \$210,000 for dividends from the Northern Electric Company. Profit and loss details of this company are contained in statement W of the Price, Waterhouse & Co's exhibit (exhibit 16). For the year 1918, however, the Northern Electric has not only paid no dividend to the Bell Telephone Company but has also fallen \$91,000 short of meeting interest charges. Consequently a deduction of \$210,000 must be made from the non-operating revenue as stated by the company.

VII.

In the computations submitted by the company, reference has been made to the ratio of net earnings to plant investment. It is not necessary to go into this in this connection or to express any opinion whether this is or is not the proper base. The opinion was expressed by Professor Bemis that reserves accumulated out of earnings and invested in plant should not be considered in dealing with rates; in other words, he contends it is the stock and bond investments which should be considered. The same contention was made by Mr. Butler, for the city of Montreal, in his argument. The matter is, however, pertinent in this connection because it refers to the investment from stock and bonds as the proper measure of the return. This test may be applied.

The position of the company in the period since the increased wages became effective may be ascertained by checking the net earnings against the capital investment. In order to ascertain whether the condition shown in 1918 has continued, the Board called for returns for January and February, 1919, on the same form as is set out in the company's statements 1 to 4 inclusive. The situation is as follows:—

		Annual Rate Per cent on Stock and Bonds.
1918—		
October.	deficit. \$ 7,856 77	—
November.	net. 78,927 82	3.2
December.	" 53,360 91	2.3
1919—		
January.	" 51,040 92	2.1
February.	" 91,216 70	3.7

In the February figures it may be noted there is a short month. For the month, the exchange revenue would be practically constant. The toll revenue would naturally be less than in a normal month, to the extent of the difference in days. On the other hand, as the wage expense is on a daily basis, the shorter month would make a corresponding difference in expenses.

As already indicated, the Dominion War Tax, which, according to the department's ruling, is not an expense, would, when deducted from expense, make a difference in the total. But, even when this is done, it still leaves the rate of return far below the 7 per cent to 8 per cent which Mr. Bradshaw in his evidence (vol. 292, p. 1062) considered proper. This was reaffirmed in his letter to the Chief Commissioner dated January 21, 1919 (exhibit 17):—

"I did not fully apprehend the question which you asked, namely, what I regarded as a reasonable return to be allowed on the equity in the enterprise. In stating between 7 and 8 per cent I had simply in mind the confinement of the rate to the amount of paid-up capital of the company"

VIII.

The budget of the company for construction and reconstruction, as made in August, 1918, before the special wage increases, involves an expenditure of approximately \$7,326,000. It is computed by the company that on the basis of 1913 and 1914 prices this could have been done for one-half. Included in the budget is an item of \$2,098,747 for reconstruction. Mr. Winter, under cross-examination by Mr. Fairty (evidence vol. 301, p. 3339), testified that salvage of \$1,313,000 had been estimated in connection with this. This deduction from the gross budget would leave the net new money required at about \$6,000,000.

Mr. Winter testified that owing to 600 of the company's employees being overseas, the maintenance had not been kept up to standard, and he estimated (evidence, vol. 292, p. 50) \$500,000 of deferred maintenance.

The necessity for the expenditure is not contested. Mr. Fairty (evidence, vol. 301, p. 3258) said: "We have given no evidence that reconstruction has been kept up;" and, again, at page 3259 he said he was not taking any exception to the statement that \$7,000,000 was needed, as set out in the budget estimate.

Mr. Bradshaw was of opinion that new capital was necessary. Under cross-examination by Mr. Osler (evidence vol. 292, p. 1069), the following discussion took place:—

"MR. OSLER: You are speaking as a bondman; that is your real experience, and that is what has brought you here?—A. Yes.

"Q. When you find no new capital brought in since 1913, substantially since the outbreak of the war, you would naturally expect that the company would make large capital expenditures for expansion?—A. I would think so.

"Q. In that respect you think the company's opinion is sound?—A. I would think so, especially in view of the extension which is taking place.

"Q. Apart altogether from the question of repairs or renewals?—A. Yes."

Mr. Bradshaw's opinion was that the necessary financing in this connection should be effected by short-term notes, and favoured a five-year term. In answer to Mr. Osler (evidence, vol. 292, p. 1070), he said:—

"A. I am thinking of the present rate of interest. I would think that money will be gradually getting easier, and the longer we get from this particular time the lower the rate; therefore, in five years from now we should get back to very nearly the condition in which we were prior to the war.

"Q. It would take something like five years to get back to that condition, in your judgment?—A. So far as money rates are concerned."

Mr. Bradshaw, in exhibit 12, stated that the applicant company's bonds have at present a yield of 6½ per cent. If short-term notes for \$7,000,000 are disposed of at 6 per cent, the annual charge would be \$420,000; while at 6.5 per cent it would be \$450,000.

The company is not including the charges for the money it is necessary to raise, whether by stock or by bonds or by short-term notes, as an item in the expense against which it is asked that an increased revenue be allowed. At the same time, it is apparent that it means an additional burden of expense against a revenue already attacked by increasing items of expense.

IX.

Of the amount comprised in the reserves of the company, there have been derived from stock premiums, \$1,459,000; from bond premiums, \$224,000; from profits on sale of plant, \$717,000.

Mr. Bradshaw, in his evidence (vol. 292, p. 1077), which is also submitted as exhibit 12, expressed the opinion that the replacement and other reserves had apparently been amply maintained, and that compared with the real estate and plant for which they are chiefly held they showed a substantial increase. His statement as showing the situation as it appeared in 1913-1917 is as follows:—

Year.	Real Estate and Plant.	Replacement and Other Reserves.	Ratio.
1913..	\$31,650,801	\$ 8,670,691	27.4
1914..	34,593,582	9,874,469	27.5
1915..	35,922,704	11,424,418	31.8
1916..	37,719,742	13,091,225	34.7
1917..	41,143,373	14,946,032	36.3

As indicated in the exhibit above, the increase in replacement and other reserves in the period in question was \$6,275,341.

The most important increases in reserves in the period from December 31, 1913, to November 30, 1918, are in the depreciation for plant and in the contingent reserves. The reserve for depreciation in this period increased from \$4,794,000 to \$12,763,000, an increase of \$7,969,000, while the contingent reserve increased from \$2,283,000 to \$3,133,000, an increase of \$850,000. Had the same amount been spent per station for replacements in 1917 as was spent in 1913 the charges to the reserve for depreciation would have been \$1,299,801, instead of \$426,902, the amount which was actually expended. The net charges per station which the company made to its depreciation reserve fell from \$4.76 per station in 1913 to \$1.56 per station in 1917. For the year 1918, down to September 30, detail for the later period is not available, the net charge to reserve amounted to 0.86 cents. Averaging this on the basis of twelve months, the amount would be \$1.34 per station.

X.

The reserves are not carried in cash but are invested in the business. The Bell Telephone Company in its report of 1917, at page 3, uses the following language:—

“As has been explained on previous occasions, a part of our earnings is derived from investment of the shareholders' funds and for the use of surpluses year by year in extending and improving the operating plant of the company.”

Discussion took place as to whether the reserves so invested in plant had a right to be taken into consideration in connection with the striking of a rate. Professor Bemis referred in his evidence to the position taken by President Vail of the American Telegraph and Telephone Company, namely, that that company was not asking for a return on the reserve investment. Mr. Hagenah, in evidence, stated he did not

agree with the position of President Vail. He said it was a matter of indifference to the public whether the money invested is obtained by taking from the reserves or whether it comes from the sale of stock and bonds. All the public was concerned with was whether it had the physical property represented by the investment devoted to its use, and that it should pay for the use of this; that is to say, if money is invested as a result of the issuance of stock and bonds, there are charges to be met, and it is contended that if instead of so obtaining funds money is taken from the reserves and invested in the plant, it is proper to have a return thereon. This position was controverted by Professor Bemis who said that these surplus earnings were not proper to use in a rate case as the basis for earnings. It is not necessary to pursue this phase of the matter as the determination of this question is not essential to the present hearing.

As indicative of the general situation of the Bell Company, reference may be made to the contingent reserve. This amounts to \$3,132,436.08. This is made up in part of the premium on the capital amounting to \$1,460,000; the balance is assigned from surpluses. This contingent reserve is not made up of liquid assets but is invested in telephone property.

In dealing with the policy as to investment of the reserves, Professor Bemis said, at page 2636 (evidence, vol. 299), that what was put in the depreciation reserve "may be put into extensions." He at the same time reiterated his position that the money so obtained from extensions was not to be regarded as an added investment for the owners of the property. As stated by him (evidence, vol. 299, p. 2702), the situation is that when it becomes necessary to take up the reserves which have been invested in the plant, the only way to do this is by the issuance of stock and bonds.

In dealing with the investment of the reserves in the plant, Mr. Dagger in his report, exhibit 38, at page 15, uses the following language:—

"It is not here suggested that the company is not entitled to the ownership of its existing reserves notwithstanding the fact that they have been built up largely out of revenue furnished by the telephone users."

In general, the evidence as given by the various experts who testified in the matter was that the investment of reserve in plant was in accordance with business practice and not objectionable; and Mr. Fairty put the matter frankly in summary form as follows (evidence, vol. 302, p. 3586):—

"I do not want to be confused upon that point, or have my words distorted. It has been the practice of this company in the past to invest its depreciation reserve by putting it back into its plant. That is in accordance with the best practice in the ordinary and normal operating of any company. It is the best thing the company can do. I am not suggesting for one moment that they should take the depreciation reserve and use it for maintenance and that sort of thing, and not charge it up."

It is patent that when the time comes that the borrowings from the reserves for plant investment must be capitalized by the issuance of securities, there must then be a return upon such securities.

Mr. Dagger's criticism of the existing policy as to reserves, as set out in his report, is that this is a policy of providing new capital "at the expense of the telephone user, for required extensions instead of adopting the more legitimate method of financing by the issuance of new securities." If, however, under the war conditions, there had not been a policy of borrowing from the reserves but, instead, issuance of securities from time to time, there would have been necessary for the intervening years, at least, an addition to revenue sufficient to meet dividend or interest, as the case might be, on the securities issued. The contrary policy obviated the necessity of financing during the most unfavourable financial conditions created by the war.

The average plant in service at the end of December, 1918, was \$42,424,308. The stocks and bonds of the company amounted to \$29,149,000. On the assumption that the plant value on the books is not in excess of a proper valuation, there is an excess of \$13,275,308 over the stock and bond investment. If this difference were divided between stock and bond issues in the same proportions as the outstanding issues and at the same rates of dividend and interest, there would be an additional bond issue of \$5,044,617, with interest charges of \$250,230, and a stock issue of \$8,230,691, with a dividend charge of \$658,457; or a total of \$908,687 in excess of present charges.

XI.

The Board has set out that comparisons of rates in one portion of Canada with those in another portion of Canada, or of rates in Canada with those in the United States, are not conclusive either of the reasonableness or unreasonableness of the rates, unless the factors pertaining to the rates complained of are on all-fours.

Canadian Oil Cos. v. G.T., C.P. and C.N. Ry. Cos., 12 *Can. Ry. Cas.*, 350, at p. 355, *Manitoba Dairymen's Assn. v. Dominion and Canadian Northern Express Cos.*, 14 *Can. Ry. Cas.*, 142, at p. 148.

In the present case, Mr. Hagenah drew attention to the lower rates existing in Canada than in the United States and expressed surprise at the company rendering, e.g., in the case of Montreal, a business service at as low a rate as it did.

Mr. Fairty stated (evidence, vol. 289, p. 3874) that he had made some inquiries as to rate conditions in the United States in cities of over 150,000 population. The following information was given by him:—

“This is what the department of law of the city of Toledo states:—

“The schedule of the Central Union Telephone Company, operating the Bell Telephone System in this city, in force in January, 1916, provided for rates as follows: Business, individual line, primary station, yearly rate, \$60; business, two-party line, each primary station, yearly rate, \$40; residence, individual line, primary station, \$30; residence, two-party line, each primary station, \$20. Each of the foregoing being subject to a discount of 10 per cent if paid at the office of the company on or before the 10th day of the month in which payment is due.

“I have not definite information with respect to August, 1914, but my recollection is that the business individual-line rate, \$60 per annum, has been in force for a great many years.

“About six months ago, the receivers of the Central Union Telephone Company made application to the Public Utilities Commission of Ohio for authority to increase the residence rates in the city of Toledo, as follows: Individual line, primary station, yearly rate, \$36 net; two-party line, each primary station \$24 net. This was contested by the city of Toledo and a hearing was had before the commission. The amended rates were allowed to be in force pending a decision, which has not yet been rendered.”

Regarding the situation in Cincinnati, a city of some 400,000 population, the following information was given:—

This communication states:—

“The rates for service in 1914 were: \$100 per annum for business phones; \$48 per annum for straight family phones; \$30 per annum for two-line family phones.

“The local rate for telephones was increased September 1 last. The advance is from \$2.50, the old price, to \$3 per quarter for party lines, and from \$4, the old price, to \$4.50 for direct lines per quarter.”

"That cannot be right. It must be per month."

"The CHIEF COMMISSIONER: Yes, monthly rates there. Did they raise the hundred-dollar rate too in Cincinnati?"

"Mr. P. A. McFARLANE: No. The application for increase applied to the residence service. That is within the base-rate area of Cincinnati."

"The CHIEF COMMISSIONER: What are the rates in Buffalo?"

"Mr. FAIRTY: The telephone rates in the city of Buffalo in 1914 and until the fall of 1918 varied for residence phones from \$2 a month for a four-party line, up to \$4 per month for a single party line, and business phones ranged from \$40 a month for a party-line up, of course depending somewhat upon the amount of business, but the highest rate, I think, for a straight single-party line was \$74. In the summer of 1918, the company filed a new schedule of rates for residences, the cheapest being \$2 per month for four-party line, limited to 600 messages, business lines were entirely on the limited message basis and ranged from \$39 for 600 messages up to \$120 for 3,300 messages with an extra charge for additional messages ranging from 5 to 3 cents per message, and also provided that additional messages might be contracted for to be furnished at the rate of 2 cents per message over the highest number provided for, namely, 3,300 messages. These rates were not fixed by any order of the public service nor by agreement with the company. Under our public service law, the company files its schedule and the rates become operative and of force. Objections can be filed by the city and an investigation started, but before the same was completed or any order made by the Public Service Commission the United States Government as a war measure assumed control of the telegraph and telephone companies and the investigation was for the time being, at least, suspended."

Information regarding rates in Winnipeg and Brandon was prepared by Mr. Guy, one of the experts called by the city of Toronto, said information being set out in exhibit 44. A summary thereof is set out in the evidence of the witness. It should be noted that Mr. Fairty desired to have it set out in the record that exhibit 44 was not asked for by the city of Toronto, but that it was asked for by the Board.

The rates charged are as follows:—

<i>City of Winnipeg.</i>		Per Annum.
Business—		
Wall..		\$60 00
Desk..		63 00
Bracket..		72 00
Residence—		
Wall..		\$30 00
Desk..		33 00
Bracket..		42 00
Two-party—		
Wall..		\$25 00
Desk..		28 00
Bracket..		36 00
<i>City of Brandon.</i>		
Business, 1-party—		
Wall..		\$40 00
Desk..		43 00
Residence, 1-party—		
Wall..		\$25 00
Desk..		28 00
Business, 2-party—		
Wall..		\$30 00
Desk..		33 00
Residence, 2-party—		
Wall..		\$20 00
Desk..		23 00

The question of the number of stations in these two cities was referred to at the hearing by the Deputy Chief Commissioner, and subsequent to the hearing Mr.

Guy furnished, through counsel for the city of Toronto, statements showing for Brandon 2,391 telephones in service and for Winnipeg 30,351.

The rates as charged are for unlimited service. Mr. Guy testified that there was no two-party line development in Winnipeg itself, the development in this regard being as to rural lines. The two-party line development in Brandon is of minor importance—the statistics as submitted show only 11 two-party line telephones.

As indicative of the general level of rates, reference may be made to the fact that the Government of Alberta has before it the question of increasing telephone rates by 25 per cent. Apparently the difficulty has been the policy as to renewals and depreciation. A new schedule of rates as prepared and submitted by the general superintendent of Alberta telephones shows in the case of exchanges having between 10,000 and 15,000 stations, the maximum provided for, business rates of \$60 for a wall telephone and \$63 for a desk telephone, while in the case of residence telephone the respective rates are \$30 and \$33.

By Order in Council of the British Columbia Government, the business telephone rate in Vancouver has been placed at \$6 per month.

XII.

The existing system of rates was objected to by Mr. Hagenah on the ground that it was illogical and unscientific. In addition to being of the opinion that the business telephone rates were on an exceedingly low basis, he was of opinion that there was not sufficient differentiation in point of service rates. His criticism was based on an objection to a flat rate and a preference for installation of a measured service rate. The measured service rate is one which is being used to a large extent in the United States. In any comparison of earnings per station of the applicant company with the station earnings of companies located in the United States, it must be remembered that the uniform practice of the Canadian Bell Company has been to give a flat rate service. In favour of the measured rate service, it has been urged, in the present application and in various investigations in the United States in which experts have testified, that it is much fairer in that it proportions the rate to the burden of the use. It is contended that if a large business has a large number of calls it is not fair that the smaller business, with a smaller number of calls, should be paying exactly the same rate. It is contended that if the rate for the larger service is fair, it must of necessity be unfair for the smaller service covered under the same rating; and, in general, the position is taken that an inordinately low rate for the more extensive service is rendered possible by the contribution from the rate of the lesser user of the service.

In the United States the unlimited service is on high rates.

In support of the measured rate service, it is contended that there may thus be scales of rates more accurately graded to the types of service demanded; that is to say, a small storekeeper in the outlying sections of a city may have a low rate covering a limited number of calls, and as most of his business will be concerned with inbound calls which will be charged against the one obtaining the connection he will have the advantage of the facility at a low rate. Further, it is urged that every such addition to the telephone system by extending the area of telephone use at the same time increases the value of the service. Mr. Hagenah also favours the extension of the two-party-line system, and was apparently much surprised at the limited extent to which use was made of this in Canada.

At the hearing, and after Mr. Hagenah's submission as to the alleged unscientific nature of the existing rate system had been submitted, the applicant submitted an exhibit providing for the rearrangement and regrouping of rates and providing for an extension of the party-line system. Provision is made in this for rearranging the existing twelve exchange groups into six. It is admitted that because of conditions developed there are in some instances apparently anomalous rate conditions.

It was not suggested that these schedules should be put in in connection with an emergency situation. Even if such suggestion had been advanced there was not adduced the evidence which would justify the rearrangement sought.

In the regrouping suggested, there are three general groups embracing the smaller telephone centres. Group 4, as proposed, covers London and Quebec; group 5, Hamilton and Ottawa; group 6, Toronto and Montreal. In all of these, provision is made for two-party-line rates.

In an analysis which has been made of the exhibit filed by the telephone company in this connection (exhibit 26) it appears that only $11\frac{1}{2}$ per cent of the total number of telephone installations are on the two-party-line system. Subdividing these between business and residence telephones, 22 per cent of the total are on the business rate. Of the total number of business telephones, 8.8 per cent are on the two-party-line system, while of the total number of residence telephones 12.6 per cent are on the two-party-line system.

The centres that are most important in the use of the two-party-line system are in order Hamilton, Windsor, London, Peterborough and Brantford. If to these are added Sherbrooke, Sarnia, Niagara Falls, Kingston, Kitchener, Guelph, Galt and Chatham, it will be found that this enumeration of centres counts for 75 per cent of the two-party-line development.

The existing system gives on a flat-rate basis, which is, according to the evidence submitted, much lower in general than that in force in the United States, an unlimited service. The use of the telephone has been built up in connection with the existing system. Whether, when a system is working with a reasonable degree of satisfaction on rates much lower, on the average even with the increases asked for, than are charged for a similar service in the United States, there should be a readjustment because of an assumed lack of scientific basis of the rates is a matter into which it is not necessary now to go.

It has not, to my knowledge, ever happened that a regulative tribunal has had put under its jurisdiction an absolutely new type of utility which has had to break ground by the installation of new rates for new service. If such a condition existed, it would be possible for a regulative tribunal to put in a scientific system adjusted to its best judgment as to the rates, catering to different degrees of demand, and having in mind the effect such rates would have on developing a diversified business.

But where a regulative tribunal's jurisdiction comes, as it always has done, after the development of a rate situation, the function of that tribunal is to regulate, not to initiate. If the law provided that a regulative tribunal should be an organization initiating rates, the situation would be different. So long as the existing law of Canada stands as it is, it seems to me that more important than the scientific basis is the question of how the rate works.

XIII.

It was stated by Professor Bemis "that with a proper treatment of depreciation there is no need of more revenue at the present time" (evidence, vol. 299, p. 2652). Mr. Dagger (evidence, vol. 300, p. 3083) expressed the opinion that "with proper information as to the actual facts 4 per cent will be found to be sufficient to set aside on a plant such as this company has." The contention of Mr. Fairty, in his argument (evidence, vol. 302, p. 3606), was that a rate of 4 per cent is quite sufficient and should be adopted.

The practice of the company in striking its depreciation percentage, as explained by Mr. Palm for the company at the hearing, was that at the beginning of each year the company maps out a plant construction programme. It was stated:—

"We estimated approximately how much that depreciation would amount to and instead of working it out in actual percentages why we use our own

figures. Sometimes there were adjustments made towards the end of the year, but we never tried to work out exactly the percentages. We did not try to adhere to an exact percentage except that we wanted to appropriate a little over 6 per cent, which covered also extraordinary repairs besides depreciation."

The extraordinary repairs as referred to here cover storm casualties, replacement of plant from some exceptional cause. Exceptional cause is stated as being mostly sleet storms.

To arrive at the total of the reserve carried for depreciation by the company, it is, therefore, necessary to add together the reserve for depreciation and the reserve for extraordinary repairs. The percentages of depreciation are, therefore, struck on this combined basis.

The percentages of depreciation applied to each item of property are from the practice of the American Telegraph & Telephone Company. At the hearing in the *Montreal Case*, Mr. Bloom, the expert for the company, testified that the percentages there used were the percentages of the American Telegraph & Telephone Company, subject to special check in various items in Montreal. Mr. Winter, the plant superintendent of the Bell Telephone Company, testified in the present case that the percentages were the American Telegraph & Telephone Company's percentages.

In reference to the fact that in 1912 the American Telegraph & Telephone Company's percentages were used, the suggestion was made in the report of Mr. Dagger that conditions might since have changed, and there was no assurance that the percentages now used were in accordance with those of the American Telegraph & Telephone Company.

Mr. Winter, the plant superintendent, testified that he had checked these percentages and that they were in accordance with the American Telegraph & Telephone Company's percentages. To quote his words:—

"These figures are taken from the American Telegraph & Telephone Company's figures (and) we have never made a study of depreciation as a company. We have checked up the matter of salvage and in a general way, with our extended knowledge of the business, we concur in the life table that the American Telegraph & Telephone Company uses."

The American Telegraph & Telephone Company has, it is testified, experts who have made laboratory tests and studies of the lives of the different portions of property concerned. The Bell Company of Canada, while its officers have knowledge as to the lives of particular pieces of property, have not made any general study whereby a life table for Canada as distinct from that of the American Telegraph & Telephone Company has been worked out; but they contend that the percentages are applicable.

The general position taken by Mr. Fairty, for the city of Toronto, and the experts called by him was that each company should have developed from its own experience life tables and percentages based thereon.

The computations made by Mr. Hagenah, for the city of Montreal, favoured the acceptance of the sinking fund form of depreciation. This is a refinement which does not appear necessary to take up. While in theory there are certain inequalities connected with the straight-line principle in that in the earlier years of the life of a particular piece of property the wear is less than in its later years, this resulting in the payment of a sum which may, from this standpoint, be excessive so far as the number of years is concerned, at the same time the straight-line method is in general business acceptance and appears to work satisfactorily.

The absolute necessity of a depreciation reserve in such a utility as a telephone company is not in contest. It is recognized that if a telephone company conducts business without an adequate reserve it means that capital assets are being used up, and to the extent that there is not adequate depreciation additional capital has to be created when the life of the item properly expires. This means that while during the

life of the item of property concerned it may be that because of inadequate provision the user is obtaining the service at a lower rate, it will inevitably happen, under such conditions, that the additional capital created must have sufficient income to carry it, and so there will be under such conditions a cumulative increasing of capital and of expense. It is elementary that this condition should be provided against.

While there was no disagreement as to this position at the hearing, there was an issue as to what was the proper percentage contributions.

The following extract from the accounting regulations of the Interstate Commerce Commission in regard to telephone companies expresses exactly and succinctly the nature and content of the depreciation reserves:—

“Depreciation of Plant and Equipment.—Telephone companies should include in operating expenses depreciation charges for the purpose of creating proper and adequate reserves to cover the expenses of depreciation currently accruing in the tangible fixed capital. By *expense of depreciation* is meant:—

“(a) The losses suffered through the current lessening in value of tangible property from wear and tear (not covered by current repairs).

“(b) Obsolescence or inadequacy resulting from age, physical change, or supersession by reason of new inventions and discoveries, changes in popular demand, or public requirements, and

“(c) Losses suffered through destruction of property by extraordinary casualties.”

* * * * *

“The estimate for depreciation of physical property should take into account:—

“(a) The gradual deterioration and ultimate retirement of units of property which may be satisfactorily individualized, such as buildings, machines, valuable instruments, etc., to the end that by the time such units of property go out of service there shall have been accumulated a reserve equal to the original money cost of such property plus expenses incident to retirement less the value of any salvage.

“(b) The depreciation accruing in property which cannot be readily individualized, such as pole lines, wires, cables or other continuous structures, where expenditures for repairs or replacements of individual parts ordinarily are not actually made until the later years of the life in service of such property, and when made may therefore be classed as extraordinary repairs.

* * * * *

The depreciation rate is not to be looked at from the standpoint of one year alone.

As already pointed out, it inevitably happens in connection with the straight-line method of depreciation, under which there is a flat yearly amount set aside, that in the earlier years of life the amount set aside will inevitably be greater than the amount of accrued depreciation. On the other hand, in the later years of life the contrary position will, of necessity, exist. As was very clearly set out in evidence by Professor Bemis, one of the experts for the city of Toronto, the matter must not be looked at from the standpoint of the amount paid in in one year and the amount paid out that year. It must be looked at from the standpoint of the cycle or composite life of the plant; and it was stated by him (evidence, vol. 299, p. 2641), that on account of special conditions there may be for two or three years a very considerable accumulation. Mr. Hagenah, in evidence, stated that ordinarily about one-half the sum set aside each year was spent in that year. This was to some extent elaborated in his statement (evidence, vol. 289, p. 3872), that whereas about one-half

was spent in a year the balance was for future use. While the statement he was making was related to his position as to the establishment of a sinking fund basis, it does not alter the facts as to the cycle.

When, on account of an item of property being in an unsatisfactory condition from the standpoint of service, it is necessary to take it out of service, it may, while no longer useful for telephone service, have a certain scrap or salvage value. The salvage is in effect a credit to the depreciation reserve, and to that extent lessens the actual amount to be taken out in a particular year. Estimates of salvage value, as made by different experts, differ in various particulars. The following table sets out the salvage percentages as shown in the exhibits of Messrs. Dagger, Hurdman and Guy, who were experts for the city of Toronto:—

SALVAGE PERCENTAGES.

	Dagger.	Hurdman.	Guy.
Land.. . . .	—	—	—
Buildings.. . . .	12	10	12
C.O. equipment.. . . .	15	20	15
Sub-station equipment.. . . .	10	30	10
Installations.. . . .	—	—	—
Interior block lines.. . . .	—	—	—
Private branch exchange.. . . .	10	20	10
Booths and fittings.. . . .	10	20	10
Exchange lines—			
Pole lines.. . . .	5	20	—
Aerial cable.. . . .	30	40	30
" wire, copper.. . . .	40	50	40
" " insulated.. . . .	10	20	10
" " iron.. . . .	—	—	—
Underground conduit.. . . .	—	—	—
" " subway.. . . .	—	—	—
" cable.. . . .	30	40	20
" " subsidiary.. . . .	30	40	20
Submarine cable.. . . .	10	10	10
Right of way.. . . .	—	—	—
Toll lines—			
Pole lines.. . . .	5	10	—
Aerial cable.. . . .	30	40	30
" wire, copper.. . . .	40	50	40
" " iron.. . . .	—	—	—
Underground conduit.. . . .	—	—	—
" cable.. . . .	30	40	20
Submarine cable.. . . .	10	10	10
Right of way.. . . .	—	—	—

What the salvage credit means is shown in the exhibit filed by the Bell Telephone Company in statement No. 2, page 13. This is summarized in the following statement, the net charges to reserve in each year being after deduction of salvage:—

Year.	Total credits to reserve.	Net charges to reserve.	Per cent of annual credit paid out.	Balance of annual credit in fund.
	\$	\$		\$
1913.. . . .	1,627,411	991,923	60·9	635,488
1914.. . . .	1,932,190	989,635	51·2	942,455
1915.. . . .	2,092,215	645,923	30·6	1,446,292
1916.. . . .	2,232,954	823,784	37·3	1,409,170
1917.. . . .	2,558,768	426,902	16·6	2,131,166
1918.. . . .	1,801,135	256,275	14·2	1,544,860
	(to Sept. 30th.)			

The total credits to the fund, in the period in question, are \$12,244,673. The balance of annual credits, credit having been allowed for salvage, is \$8,109,431. It is further to be noted that of the balance of \$12,268,824 to the credit of the depreciation

reserve, as of September 30, 1918, including the balance as of 1912, \$6,531,488, or, approximately, 50 per cent has accumulated in the years 1915 to 1918, inclusive.

There was a general agreement on the part of the experts called that property was normally about 80 per cent depreciated; that is to say, a reserve equal to 20 per cent of the average plant in service is adequate. The plant in service on September 30, 1918, was \$43,200,000, 20 per cent of which would amount to \$8,640,000; or, if computed on the depreciable property of \$41,434,000, an amount of \$8,286,800. Had the average of 1913 and 1914 applied to the total amount in the fund as of September 30, exclusive of the balance of 1912, there would have been \$5,434,114. This, added to the balance in the reserve as of 1912, would give a total of \$9,592,707—22 per cent on the total plant value and 23 per cent on the depreciable plant value.

The life of a plant is an absolutely essential figure in determining the rate which has to be struck. Estimates of life are explained in Mr. Guy's evidence as being based on "experience of other engineers, and other similar materials under similar conditions and a similar inspection. If it is a short life property we take it on the utility itself." (Evidence, vol. 301, p. 3201.)

The exhibits filed with the Board by different experts show variations. Reference is made in the following table to the table of life figures as shown in the exhibits of Messrs. Dagger, Hurdman and Guy:—

LIFE IN YEARS.

	Dager.	Hurdman.	Guy.
Land.....			
Buildings.....	60	60	35
C. O. equipment.....	17	15	14
Sub-station equipment.....	17	10	15
Installations.....			
Interior block lines.....			
Private branch exchange.....	17	10	15
Booths and fittings.....	15	10	15
Exchange lines—			
Pole lines.....	16	15	16
Aerial cable.....	15	15	15
Aerial wire, copper.....	40	25	40
" insulated.....	14	12	14
" iron.....	18	15	18
Underground conduit.....	66	100	30
" " subsidiary.....	33	100	30
" cable.....	33	25	25
" " subsidiary.....	17	20	25
Submarine cable.....	10	10	10
Right of way.....			
Toll lines—			
Pole lines.....	18	20	18
Aerial cable.....	15	15	15
Aerial wire, copper.....	40	25	40
" iron.....	18	15	18
Underground conduit.....	66	100	30
" cable.....	33	25	25
Submarine cable.....	10	10	10
Right of way.....			

Mr. Dagger, who has had a long and varied experience both in connection with telephone operation in England and the activities in connection with telephone regulation in Canada, was referred in examination by Mr. Fairty to what was said in Mr. Hagenah's report as to standard estimates of life, and was asked (evidence, vol. 300, pp. 3083-3084) whether estimates of life in the telephone business had got to where they could be called standard, to which he replied, "I would not say so."

Two sets of factors enter into depreciation: first, wear and tear; second, inadequacy and obsolescence. *City of Montreal v. Bell Telephone Co., 15 Can. Ry. Cas.,*

118, at pp. 129-135. Mr. Winter, under cross-examination by Mr. Fairty, stated that wear and tear is a factor which has a smaller influence in a telephone plant than in any other form of public utility, and he stated that the chief depreciation in a telephone plant was due to inadequacy and obsolescence.

The evidence presented by Messrs. Dagger, Guy, Hurdman and Bemis minimized the importance of obsolescence. Their general opinion as expressed was that there had been such a development in the telephone art that relatively few improvements or changes which would cause the discarding of otherwise perfectly satisfactory plant could be looked for; and it was further contended in this connection that if changes took place, e.g., the change from the manual to some form of automatic which was stated to be in contemplation by the American Telegraph and Telephone Company, the economies in connection with this change would more than take up the increased expense.

At page 3096 (vol. 300) of the evidence, Mr. Dagger was asked by Commissioner McLean:—

“COMMISSIONER MCLEAN: You say in substance that the depreciation against obsolescence is something that can be done away with because the art has been standardized, and that there are few or no changes that you can see?—
A. Not unless the automatic comes in, or some improvement which either reduces the cost of labour, or something that is in the interests of the company as a matter of economy to carry out.”

The factor of obsolescence and inadequacy is also affected by changes brought about by municipal regulations.

The extract already given from the accounting regulations of the Interstate Commerce Commission recognizes obsolescence and inadequacy as a factor. A study of the exhibits and testimony given in the recent hearing in their bearing on depreciation as well as attention directed to the different reports made in the Chicago situation, references to which were made in evidence, show how experts, giving the matter their best judgment, may on identical statements of facts differ from each other as to the weight to be given to particular items. If this is so as to the portions more closely related to wear and tear where it may be contended that experience tables based on actual facts can be developed it would seem that there was still more opportunity for this divergency of opinion where matters of obsolescence and inadequacy arise. While the experience of the companies as to obsolescence and inadequacy in the past is one factor, there is also another phase which may be called conjectural, or, in other words, a matter of opinion as to what will be the change in this respect in the future. Will there be changes in the ratio? Will there, over and above the ratio of change which has taken place, be additional change, or will there be lesser changes?

Over against the contentions that obsolescence has practically departed as a factor to be considered, evidence was submitted on behalf of the telephone company. Mr. Lash gave evidence as to figures on switchboards, for some twenty offices, involving a change from magneto to common battery, as well as from one common-battery type to another common-battery type, and he said these show variations in life from five to thirteen years; in one case the life being three years.

A very proper line of questioning was developed by Mr. McMaster as to the possibility of further utilizing switchboards. In some cases it was possible by rearrangement to use these switchboards; in other cases it was not.

Further detail given by Mr. Lash may be summarized. Sixteen buildings, because of expansion in business, had an average life of 9.3 years. This would give a gross depreciation rate of 10.8, as computed, against 2.6 as used in the general depreciation table submitted by the Bell Telephone Company. The average life of toll-boards at twelve places was given at 7.6 years. New toll-board equipment for the Montreal toll-board was put in, costing \$26,000, and about \$15,000 of this was for replacement on account of obsolescence.

Some general statements of opinion were expressed by Mr. Lash in regard to obsolescence and inadequacy. At evidence, vol. 301, p. 3320, he said:—

“I have been in the business for twenty-five years and have never seen as many changes in the art as have taken place in the last five years, and, as I have reason to believe, will continue to be made.”

At page 3321, same volume, he said, regarding the art:—

“It is continuously changing. There is nothing standard in the telephone business. The automatic is coming along; that is a standard with the American associated companies at the present time. If we adopt the automatic in Canada, I do not know what it will mean in the way of new stuff to introduce a radical change in a plant of our type.”

The removals for obsolescence and inadequacy were testified by Mr. Winter (evidence, vol. 301, p. 3341) to be found to be proportionately greater in 1916 and 1917 than before.

In view of the accounting practice of the Interstate Commerce Commission which has been developed after careful investigation, and which has been continued, and in view of the evidence in the present case it does not appear that the position is tenable that obsolescence is a factor to be disregarded. Just what relation the provision for obsolescence and inadequacy should bear to the provisions for wear and tear is a matter of opinion.

In the evidence in the *Montreal Case*, Mr. Bloom (at vol. 153, p. 6186) expressed the opinion that of the 6.1 per cent which he computed as depreciation ratio, this amount was divided between age, wear and tear on the basis of 2.37 and obsolescence and inadequacy on the basis of 3.73. This was simply an opinion.

This would make the provisions for obsolescence and inadequacy 114 per cent of the provisions for age, wear and tear; and on this basis, if 4 per cent is taken as a proper provision where the art has been standardized by the elimination of obsolescence and inadequacy, 5.56 per cent would have to be added to provide for obsolescence and inadequacy, giving a total of 9.56 per cent. If 3 per cent is taken as the provision for age, wear and tear, it would give a total of 6.42 per cent. The statement was expressed, however, simply as an opinion, the details on which it was based not being submitted.

In the Chicago investigation, an attempt was made in the Byllesby & Arnold analysis to differentiate between the amount chargeable to wear and tear and the amount chargeable to obsolescence and inadequacy. (Page 46 of the Bemis report of 1912.) This set out detail by items and is the only example of such a detailed analysis I have been able to acquaint myself with. Under this, the proportion computed as being necessary for obsolescence and inadequacy is approximately 83 per cent of that set aside for wear and tear. If it is assumed that $3\frac{1}{4}$ per cent is a proper net provision for age, wear and tear, without any consideration for inadequacy and obsolescence, then on this basis the loading for inadequacy and obsolescence would be 2.905 per cent, giving a ratio of 6.405. If, on the other hand, 4 per cent is taken as a net basis for age, wear and tear, the additional loading for inadequacy and obsolescence would be 3.32 per cent, giving a ratio of 7.32 per cent.

For ease of comparison there are collected in the following table the depreciation percentages as set out in the exhibits submitted by Messrs. Dagger, Guy, Bemis (the Washington Case) and the applicant company:—

	Dagger.	Hurdman.	Guy.	Bemis.	Bell Co.
Land.....					
Buildings.....	1.67	1.5	2.857	1.17	2.6
C. O. equipment.....	6.0	5.3	7.143	4.12	9.9
Sub-station equipment.....	6.0	7.0	6.66	6.00	10.0
Installations.....					
Interior block lines.....					
Private branch exchange.....	6.0	8.0	6.66	5.66	10.0
Booths and fittings.....	6.66	8.0	6.66	10.0	16.0
Exchange lines—					
Pole lines.....	6.25	5.3	6.25	6.67	10.0
Aerial cable.....	6.66	4.0	6.66	3.55	5.8
Aerial wire, copper.....	2.5	2.0	2.5	7.93	5.8
" insulated.....	7.0	6.6	7.143	7.93	9.5
" iron.....	5.55	6.6	5.55	7.93	14.5
Underground conduit.....	1.5	1.0	3.33	1.18	2.0
" subsidiary.....	3.0	1.0	3.33	1.18	6.7
" cable.....	3.0	2.4	4.0	2.4	3.0
" subsidiary.....	6.0	3.0	4.0	2.8	5.8
Submarine cable.....	10.0	9.0	10.0	2.4	11.1
Right of way.....					6.3
Toll lines—					
Pole lines.....	5.55	4.5	5.55	6.67	6.3
Aerial cable.....	6.66	4.0	6.66	3.55	5.8
Aerial wire, copper.....	2.5	2.0	2.5	1.48	2.2
" iron.....	5.55	6.66	5.55	7.93	8.3
Underground conduit.....	1.5	1.0	3.33	1.18	2.0
" cable.....	3.0	2.4	4.0	2.4	2.4
Submarine cable.....	10.0	9.0	10.0	2.4	11.1
Right of way.....					2.5

Variations as between exhibits as to depreciation percentages are shown in the following composite statement worked out on the Dagger-Hurdman-Guy exhibits as to depreciation, showing:—

- (a) Highest depreciation as based on the shortest life in each case;
- (b) Lowest depreciation as based on longest life in each case.

The percentages as marked by letters D, H, and G indicate whether the source is the Dagger, Hurdman or Guy exhibit:—

	(a)	(b)
	%	%
Land.....		
Buildings.....	G-2-857	H-1-5
C. O. equipment.....	G-7-143	H-5-3
Sub-station equipment.....	H-7-0	D-6-0
Installation.....		
Interior block lines.....		
Private branch exchange.....	H-8-0	D-6-0
Booths and fittings.....	H-8-0	D & G-6-66
Exchange lines—		
Pole lines.....	D & G-6-25	H-5-3
Aerial cable.....	D & G-6-66	H-4-0
" wire, copper.....	D & G-2-5	H-2-0
" " insulated.....	D & G-7-0	H-6-66
" " iron.....	H-6-66	D & G-5-55
Underground conduit.....	G-3-33	H-1-0
" " subsidiary.....	G-3-33	H-1-0
" cable.....	G-4-0	H-2-4
" " subsidiary.....	D-6-0	H-3-0
Submarine cable.....	All-10-0	All-10-0
Right of way.....		
Toll Lines—		
Pole lines.....	G-5-55	H-4-5
Aerial cable.....	D & G-6-66	H-4-0
" wire, copper.....	D & G-2-5	H-2-0
" " iron.....	H-6-66	D & G-5-55
Underground conduit.....	G-3-33	H-1-0
" cable.....	G-4-0	H-2-4
Submarine cable.....	All-10-0	All-10-0
Right of way.....		

Taking the aggregates arrived at from applying the foregoing percentages to the depreciable property as given of September 30, 1918, and without making any allowance for salvage, there is a spread of \$620,000 between the high and low aggregates. When applied as a percentage on the same base, the aggregate under column (a) gives 5.51 per cent, while under (b) it is 4.02 per cent—a spread of 1.49 per cent.

From the evidence it appears that no common denominator has yet been arrived at for the various factors—life, wear and tear, obsolescence, rate—that enter into the determination of depreciation. While it is a matter in part based on experience, it is also a matter into which opinion enters as a factor of considerable importance. The difficulties in this respect have been very frankly put before the Board by Messrs. Dagger and Bemis.

As already indicated, Mr. Dagger stated that estimates in life in the telephone business had not yet arrived at the point where they were standard.

In submitting, in his report, an average rate of depreciation, Mr. Dagger said (evidence, vol. 300, p. 3082): "This table is built up merely as an opinion."

Mr. Dagger has expressed a preference for a rate of approximately 4 per cent. In a number of cases in which telephone-rate increases were developed in proceedings before the Ontario Railway and Municipal Board, for which organization he acts as an expert, it was made a condition of the rate increases that a 5 per cent depreciation reserve should be created. Mr. Dagger stated in evidence, that while this rate is being used by the Ontario Railway and Municipal Board it has not arrived at a final opinion, and he was of the opinion that a lower rate than 5 per cent should be used. This is an opinion, but not a concluded opinion based on general experience tables of Ontario telephone companies. There has not been among the telephone companies of Ontario any general provision of depreciation reserves.

Reference was made at the hearing to information which Mr. Dagger had received from a considerable number of telephone companies in Ontario as to the

condition of their plants. As exception was taken as to the form of this, the letters were not filed. In so far as reference is made to it in evidence, it would appear that the companies involved seemed to consider that they were working on a satisfactory basis without depreciation. The establishment of an adequate depreciation fund is so cardinal in telephone practice that it would not appear that a system which has, so far as the majority of its individual members are concerned, made little or no provision for depreciation, can very well afford any criterion of what a proper depreciation rate should be; nor do I understand it is so claimed.

Mr. Dagger in his evidence, as well as in his report, expressed the opinion that the true test of depreciation was the experience of the company concerned. He recognized at the same time an imperfectly defined field of opinion as to the rate of depreciation. Cross-examined by Mr. Macfarlane (evidence, vol. 300, p. 3091), he gave the following information:—

“Q. Coming to the question of depreciation I think you said the rate of depreciation which should be charged by any company was always a matter of opinion and a matter of judgment?—A. Absolutely.”

The opinion expressed by Professor Bemis (evidence, vol. 299, p. 2624) that 4 per cent was approximately a sufficient allowance, was an opinion. He said in this connection: “It is very difficult, as I was about to say, to reach a conclusive, certain opinion in this matter of depreciation. Telephone properties are hardly old enough yet for us to be positive about it.”

The amount credited to depreciation during 1918, by the applicant company, amounted to \$2,648,760. The amount Professor Bemis would allow, on his basis, is \$1,713,000. Exhibit 40, prepared by Mr. Dagger, giving annual depreciation on the applicant company's plant, computed on the straight-line basis, at rates fixed by the Manitoba Public Utilities Commission, gave an average rate of 4.48 per cent and a total of \$1,935,545. The depreciation rates used in Manitoba have varied. As testified by Mr. Guy (evidence, vol. 301, pp. 3196, 3236 and 3244), prior to 1917, this was 5.15 per cent on the depreciable property. This was set aside in a fund with interest thereon at 4 per cent. Apparently at the end of the year the amount so set aside would, with interest, amount to 5.35 per cent.

In February, 1918, the utilities commission put in a revised depreciation rate, which is shown by exhibit 41 as averaging 3.34 per cent. Sufficient time has not elapsed to permit evidence to be submitted to show how this is working out. It is simply mentioned to make the record clear. It was not contended by the parties that it should be used as the measure of depreciation for the applicant.

Reference was made at the hearing to various investigations made in connection with the Chicago telephone situation—investigations which emphasize the tendency of experts to differ on common facts. In the report participated in by Mr. Jackson in 1907, whose firm has since acted in an advisory capacity to the British Post Office in connection with the taking over of the National Telephone Company, a rate of 5.75 per cent on a sinking fund basis, with interest at 3 per cent, was recommended.

Exhibit 23, submitted by Professor Bemis, sets out the percentages accepted in the *Chesapeake and Potomac Telephone Company's Case*. This is also set out in the tabular summary already given. As set out in the evidence, this dealt with a city situation. The extent that underground conduit and cable is in use has, of course, an effect on the average rate of depreciation. In the *Washington Case*, on a cost of reproduction basis, 40.1 per cent fell within these categories; while in the case of the applicant company, on a book-value basis, the percentage is 28.2 per cent. It is also manifest that there are differences between building conditions in a city system and a system spread out as is that of the applicant company, comprising city, town and village conditions.

Dr. Hammond V. Hayes, who assisted the British Postmaster General in the proceedings leading up to the acquisition of the National Telephone Company, made a valuation which was submitted in 1915 to the Board of Commissioners for Public Utilities for the province of Nova Scotia. The depreciation percentages used by him.

when applied to the total of the Bell Company property at book values average 5.92 per cent. In this computation land is omitted, but right of way is included as in the Hayes' percentages. The percentage amounts involved under right of way are not large. These percentages as applied in this calculation do not consider salvage.

The Jackson firm, already referred to, subsequently prepared a scheme of telephone rates for the Public Utilities Board of Nova Scotia to cover the Maritime Telegraph and Telephone Company. The amount recommended by them as a provision for depreciation and adopted by that board in June, 1918, averages 5.96 per cent on the valuation as allowed by the Utilities Board.

If the amount recommended by Professor Bemis is adopted, it will fall short by \$600,000 of meeting the amount of increased wages, without mentioning other increased costs.

No standard accounting forms for telephone statistics have been adopted in Canada. In the United States, where they have been adopted, the Interstate Commerce Commission has not, so far at least, prescribed what depreciation rates shall be adopted.

The Board, in the *Montreal Telephone Case*, 15 Can. Ry. Cas., 118, at p. 134, ruled that land should not be included in the base on which depreciation was computed. The company, in its tabular statement No. 2, sets out the following detail:—

	Plant, Sept. 30, 1918.	Depreciation, per cent.	Annual Depreciation.
	\$		\$
Land	850,000		
Buildings	3,258,297	2.6	84,716
Central office equipment	8,212,335	9.9	813,021
Substation equipment	3,687,087	10.0	368,708
Installations	800,051		(a)
Interior block wires	41,392		(a)
Private Branch exchanges	1,012,521	10.0	101,252
Booths and special fittings	128,684	10.0	12,868
EXCHANGE LINES.			
Pole lines	4,632,265	10.0	463,226
Aerial cable	3,318,811 (b)	5.8	192,491
" wire, copper	246,646 (c)	5.8	14,305
" " insulated	1,356,554 (c)	9.5 (d)	128,872
" " iron	863,261 (c)	14.5	125,173
U. G. conduit, main	2,985,248	2.0	59,704
" " sub	568,618	6.7	38,097
" cable, main	4,226,227	3.0	126,786
" " sub	469,580 (b)	5.8	27,235
Submarine cable	38,549	11.1	4,278
Right-of-way	22,974	6.3	1,447
TOLL LINES.			
Poles lines	2,808,939	6.3	176,963
Aerial cable	38,057	5.8	2,207
" wire, copper	2,961,332	2.2	65,149
" " iron	209,924	8.2	17,423
U. G. conduit	20,351	2.0	407
" cable	337,593 (b)	2.4	8,102
Submarine cable	53,766	11.1	5,968
Right-of-way	51,293	2.5	1,282
Total	43,200,363	6.573	2,839,680

(a) Loss in this item due to plant abandoned on account of disconnections is charged "expense station removals and changes."

(b) Cable terminals are included in the amount of cable plant. Depreciation per cent is lower than used for terminals when separated.

(c) The different kinds of wire are not kept in separate accounts. The proportion as given has been arrived at by taking the same percentage of the total aerial wire plant, September 30, 1918, as obtained by study as of June 30, 1916, viz., copper wire, 10 per cent; insulated wire, 55 per cent; line, 13 per cent; drops, 42 per cent; iron wire, 35 per cent.

(d) A portion of the loss is taken care of by station removals and changes.

The percentages of depreciation to average plant are shown in the period 1912-1917, to have varied from 5.952 per cent to 6.320 per cent.

While, as noted, no depreciation rate is given for land, and, while, as indicated, the items of installations and interior block wires are provided for elsewhere, they are included in the sum on which the average is computed. The items for right-of-way may be taken exception to, but are not large enough to have an appreciable effect on the percentage. Deducting the items as referred to and computing on the revised base, there is a percentage depreciation of 6.84 per cent provided for.

While the extract as given above from the exhibit shows a total charge for depreciation, as estimated, of \$2,839,680, the amount actually charged, as shown in statement No. 2, was \$2,648,760 which amounts to 6.24 per cent on the average plant in service including land and items which should, for the reasons given, be deducted; and on the revised base, as given above, the rate is 6.51 per cent.

XIV.

For a number of years the company has been deferring maintenance and borrowing from the reserves for extensions. A considerable part of the favourable showing it made in the war period, prior to the increased wage costs, is due to this. It has to be recognized that this policy was a cheaper one than would have been financing during the war period.

Details are available in regard to the expenditure on maintenance. The following table gives the average expenditure for current maintenance per station on the basis of total number of telephones at the end of each year, as well as detail regarding percentage increases:—

Year.	Average expense per station.	Increased percentage in number of phones.	Increased percentage in main- tenance.
	\$ cts.		
1913.....	6.93	—	—
1914.....	7.16	6	9
1915.....	6.52	2	(-) 7
1916.....	5.92	7	(-) 3
1917.....	5.61	8	2
1918.....	6.27	6	19

The expenditure for maintenance during the period in question is \$9,888,143, or an annual average of \$1,648,023. If the average expense for maintenance per station of the years 1913-1914 is taken, these being years before the disturbing conditions as to war prices, the average for the two years in question is \$7.04. Had this average been applied throughout, it would have required an expenditure for maintenance of \$10,832,954, a sum approximately \$1,000,000 greater than was actually expended, and it would have called for an annual average expenditure of \$1,805,492 as against \$1,648,023.

The fact that in the period from 1915 to 1917, inclusive, there was along with an increasing number of telephone stations a decrease in the expenditure per station is indicative of the energetic curtailment on maintenance expenditure. The further fact that the gross sums expended on maintenance did not keep pace with the increase in the need for maintenance as measured by the number of stations is a further indication of the very sharp curtailment in expenditure.

There was a sharp increase in current maintenance in 1918 as compared with 1917, this amounting to \$408,258. At the same time, it must be remembered that for

the years 1915-1917 the expenditure on this account had practically been standing still. The figures are: 1915, \$1,587,079; 1916, \$1,549,939; 1917, \$1,595,366. The increase in 1918 over 1917 was apparently a necessary partial taking up of the slack of the period 1915-1917. At the same time the amount spent per station in 1918 was less than that spent per station in 1913 and 1914, although in these years the purchasing power of money was twice as great as in 1918.

XV.

In the evidence as submitted and in the computations as set out in exhibit 9, the company gave estimates as to the revenue which could be expected, this being used as a base for the company's computations as to rate increases. In arriving at its computations, the average figures for September, 1918, were taken as a base, and an increase of 10,000 telephones for 1919 was estimated. In that month, there were on the average 295,735 telephone stations in use, and it was estimated that 305,626 stations would be in use at the end of 1919; and it was estimated that on this base the exchange earnings for the year 1919 would amount to \$8,629,044.

The figures for December, 1918, show 303,205 telephones in use. An increase of 10,000 telephones over this would give a total of 313,205 telephones.

The exchange revenues per station for the period 1913-1918 based on the number of telephones at the end of each year, are comparatively steady. The figures are as follows:—

1913..	\$28 43	per station.
1914..	29 33	"
1915..	29 50	"
1916..	28 62	"
1917..	28 31	"
1918..	28 81	"

The gross exchange revenue for 1918 is \$8,790,217. Included in this are certain items, e.g., public pay stations, service stations, attachments and rentals, private lines and real-estate earnings (net), on which the advances proposed do not apply. These items represented 6.5 per cent of the total. Deducting this and taking the lowest average station earning the following figures are available:—

Exchange revenue (on which increases apply)	\$8,228,852
10,000 telephones at \$28.81	283,100
Total	<u>\$8,511,952</u>

In computing the toll revenue, exhibit 9 above referred to shows the following for the period 1913-1918:—

Year.	Gross tolls per station.	Company's tolls per station.
1913..	\$ 9,750	7,591
1914..	9,099	7,272
1915..	9,672	7,584
1916..	10,786	8,361
1917..	11,040	8,494
1918..	11,448	8,954
	<u>61,795</u>	<u>48,256</u>
Average..	10,299	8,043
Average stations December 31, 1919, estimated..	<u>305,626</u>	

As was to be expected, the toll revenues per station experienced a very considerable increase for the period 1916-1918.

The gross toll revenues for 1918 were \$3,437,327. From these are to be deducted items on which the increases do not apply, viz., attachments and rentals, leased lines,

Morse service, messenger service (net), amounting to 4.9 per cent. Making the appropriate deduction, the following figures are available:—

Toll revenue (as computed)	\$3,268,979
10,000 telephones at \$10.29	102,290
Total	<u>\$3,371,269</u>

What is set out above applies to gross tolls. The net tolls, i.e., the company's proportion of all tolls, is \$8,043 per station. This computed on the 313,205 telephones would give a total of \$2,519,104.

The total of both computations follows on revenue affected by increases:—

Exchange revenue	\$ 8,511,952
Toll revenue	3,371,269
Total	<u>\$11,883,221</u>
Exchange revenue	\$ 8,511,952
Toll revenue (net)	2,519,104
Total	<u>\$11,031,056</u>

XVI.

Mr. Fairty, in his argument, quoted, with approval, the position taken in different decisions of various commissions in the United States. Reference may be made to the following (evidence, vol. 302, pp. 3567, 3568, 3569):—

"Re Northern California Power Co., P.U.R., 1918, C. 394, California Railway Commission decision No. 5121, February 7, 1918.

"Utilities should certainly not expect the public to bear all the burden of the prevailing abnormally high prices due to war conditions, nor ask that they be permitted to earn the same returns that might reasonably be expected under normal conditions. Applicant herein recognizes this fact"

"Re Washington Gas Light Co., P.U.R., 1918, C. 475. District of Columbia Public Utility Commission Order No. 254, March 15, 1918.

"The increase in the cost of production has been occasioned by conditions brought about by the war and imposed a burden which must be borne by both producer and consumer and so distributed so as to be equitable to both."

"Re Bridgetown and Millville Traction Co., P.U.R., 1918, B. 357, New Jersey Board of Public Utility Commissioners, November 19, 1917.

"A public utility should be allowed to earn enough revenue to provide for the following outgo, viz:—

"(1) Reasonable operating expenses sufficient to provide for conducting its business and for current repairs and maintenance.

"(2) Taxes imposed on it.

"(3) A sum sufficient to provide for annual depreciation accruing over and above current repairs and maintenance in order to preserve investment intact.

"(4) A return on investment sufficient to command needed capital."

"Re Newburyport Gas and Electric Co., P.U.R., 1918, B. 766, Massachusetts Board of Gas and Electric Commissioners, October 26, 1917.

"Both consumers and stockholders must realize that in a time of great stress and in meeting conditions for which neither are responsible, there must be sacrifice and self-denial on both sides."

"Re West Union Natural Gas Co., P.U.R., 1918, B. 766, West Virginia Public Service Commission, Case No. 546, November 10, 1917.

"The utility should not pass on to the consumers all of the burden caused by increase in wages, cost of materials, and taxes due to the abnormal conditions now prevailing because of the war."

He defined the characteristics of an emergency as being impairment of service and impairment of credit (evidence, vol. 302, p. 3574).

In general, the position as set out in the decisions to which Mr. Fairty refers was that where there was an emergency, it was reasonable that there should be a division of burden between the consumer and the company, and that included in this should be a return on investment sufficient to command the needed capital.

I am in agreement with the position based on the decisions as referred to as to the propriety of the division of burden in an emergency case.

(1) The evidence shows a sharp increase in wages since October, 1918.

(2) Coincident with this, there has been a falling off in the rate of return on the capital invested as represented by stocks and bonds, which falls below what is reasonable.

(3) There has been a sharp increase in material prices, and while it is hoped that there may be a readjustment in prices the existing level in all probability will not be greatly revised for some time to come.

It is conceded that the company is in such a position that money must be raised to take care of construction, both by way of replacement and extensions.

There is such an emergency as justifies aid by way of increased returns being allowed so that the company may be able to meet increased operation costs, meet its service requirements, and be in such a position as will enable the necessary reconstruction and extensions to be made.

As already pointed out, what is in reality asked for is such a sum as will meet the increased wage burden, leaving the company to bear the increased material and other costs.

I am of opinion that a sum of approximately \$1,550,000 is necessary and should be allowed.

In the raising of this sum the company will have to participate.

The company has adopted as its depreciation percentages those used by the American Telegraph and Telephone Company. In the contract entered into and at present existing between the United States Government and the American Telegraph and Telephone Company, it is provided that during the period of Federal control the Postmaster General is to set aside each year for depreciation and obsolescence an amount relatively equal to that of the past. Under this, a rate of 5.72 per cent is being provided for. The depreciation is computed on tangible fixed capital, excepting right of way and land.

Without expressing an opinion as to whether this percentage should be continued beyond the emergency, I am of opinion that as an emergency measure the company should not exceed 5.7 per cent as an average percentage for depreciation.

The depreciation should be on a base from which the items of land, right of way, installations and interior block wires are omitted. The reason for the omitting of the latter two items has been set out.

Computed on the 1918 figures of average plant in service, subject to the deductions above set out, this rate will, as compared with the rate of 6.51 per cent on the same base, mean a deduction from depreciation of approximately \$330,000.

No computation, by way of deduction, of salvage is made. The salvage will be in case of the demands upon the reserve.

Further, in view of the time which has necessarily elapsed the company, instead of obtaining the full advantage of the increase which the Board finds necessary, only has the advantage of this during a portion of the year. The difference between the

total increased costs and the amount of the increases available in the present year represents a further participation by the company in the division of the burden, which difference the company itself will have to bear.

The connection charges were, in general, approved, or, more correctly, were not objected to.

The general position taken by the municipalities regarding the connection charges was summarized in the argument of Mr. Fairty at evidence, vol. 302, p. 3609, when he stated he was making no objection to them.

The only exception taken was by Mr. Hagenah, who was opposed to a connection charge on the ground that such a charge would tend to lessen the use of the telephone, thus running counter to a public interest concerned with as wide a diffusion of telephone service as possible. He also was of opinion that it was not in the interests of the company itself to make such a charge.

The company submitted a schedule of connection charges varying from \$2 to \$6, according to the telephone rate. As explained in evidence by Mr. Sise (evidence, vol. 292, p. 436), the charge is based on the theory of the value of the service, the idea being that those who pay the higher rates are receiving a greater amount of service.

The computations of the applicant company as set out in exhibit 9 show that each station gained represents 2.6 stations installed. The connection charge is computed at \$4.36.

The company's computations, based on 10,000 stations, give a computed revenue of \$113,366.

The statutory obligations of the company under the Special Act, 2 Edward VII, chapter 41, must, however, be considered. Section 2 of the Act reads:—

“Upon the application of any person, firm or corporation within the city, town or village or other territory within which a general service is given and where a telephone is required for any lawful purpose, the company shall, with all reasonable despatch, furnish telephones, of the latest improved design then in use by the company in the locality, and telephone service for premises fronting upon any highway, street, lane, or other place along, over, under or upon which the company has constructed, or may hereafter construct, a main or branch telephone service or system, upon tender or payment of the lawful rates semi-annually in advance, provided that the instrument be not situate further than two hundred feet from such highway, street, lane or other place.”

When the attention of counsel for the telephone company was directed to the consideration of the obligations imposed by this section, he expressed the opinion that if there was a tariff, as is at present proposed in respect of connection charges, the requirements of the section would be met. The section provides that on the application of any person, firm or corporation within a city, town, or village or other territory within which a “general service” is given, the company is with all reasonable despatch to furnish telephones. The limitations imposed are:—

(1) That the telephone service is to be for premises fronting “upon any highway, street, lane or other place along, over, under or upon which the company has constructed, or may hereafter construct, a main or branch telephone service or system.”

(2) Provided that the instrument be not situated further than 200 feet from such highway, street, lane or other place.

(3) There is to be tender or payment by the applicant of the lawful rates, semi-annually, in advance.

Rates as referred to here are connected with the question of general service and are rates for general service, this being a general telephone service.

The lawful rates are to be paid semi-annually in advance. If there were a charge for connection or installation, then the charge would not be a continuing one after the work of connection or installation was finished. The fact that the rates are referred to as being continuing rates connects them up with a continuing telephone service. In view of the limitations of the legislation, the company has no power to impose the connection charge which it desires to charge.

A revenue from moving charges which the company desires to obtain was not taken exception to by the various municipalities.

The computations whereby the company arrives at its results in respect of computed revenue are set out in exhibit 9. The net revenue which it estimates from the new charges, based on 10,000 telephones, is \$123,978.

This charge may be allowed.

No objection was raised by the municipalities to the increase in moving charges and in long distance rates. On the contrary, it was urged that the full burden of any necessary increase might be obtained from these services, including the connection charge. The increased costs, however, which have to be met and the needs existing are the outcome of conditions affecting both toll and exchange revenues and must be participated in by both.

The revised toll rates which the company proposes are based on air-line distance. In some cases there are increases; in other cases decreases. A computation made by the company showed 9 per cent over the net toll revenue for 1918. The final estimate, however, as already set out, shows that the net addition to the toll revenue, in 1919, would only be some \$18,000. This is based on the idea that the toll revenues during the war period were abnormal and that a sharp decrease in the use of long distance may be expected. During the war, the industrial activities in connection with munitions, etc., were such that long distance was very frequently used in order to speed up activities.

To what extent there will be a falling off in the volume of long-distance business it is impossible to say. The gross toll revenues for January and February, 1919, showed an increase of 4 per cent over the same months in 1918. Even if allowance is made for industrial readjustment and effect of increased rates, so sharp a reduction as the company anticipates does not seem probable.

While there are fluctuations in the revenues, the use of the telephone is, on the whole, steadily increasing, and while we are going through a period of readjustment, whose outcome cannot be accurately forecasted, it is not to be expected that telephone expansion will stop.

The increases in toll rates, as applied for, should be allowed. A ten per cent increase in exchange rates, instead of the 20 per cent as applied for, should also be allowed.

Applications were launched on behalf of the cities of Toronto, Hamilton and Brantford for a 10 per cent reduction. The recommendations as given above hold that the applications for a 10 per cent reduction are not justified by the evidence.

Reference has been made to anomalies existing in the structure of telephone rates. It has been pointed out that an addition of a percentage to an existing rate which contains an anomaly simply accentuates the anomaly. It was contended, especially by the city of Montreal, that its existing rate basis was discriminatory. Submissions were made by Mr. Hagenah based on the number of telephone installations. This is not of itself, it seems to me, sufficient to establish a *prima facie* case of discrimination. The present application is being dealt with as one of emergency and, therefore, emergency action must be taken. While it might be suggested that during the currency of the emergency situation the rates so found necessary should not be attacked as discriminatory, this position would not in any way change the rights of the parties under the Railway Act.

Where no contractual obligations limit the company, the increased rates may be put in on one week's notice. Where there are contractual obligations, if any, the rates may be put in at the earliest moment the company is free from such obligations if any. The extent of the hearings and the thoroughness with which the matter was presented justifies short notice.

As already pointed out in the interim judgment of the Chief Commissioner, the Board will retain the conduct of the case, and it will take steps to obtain the necessary information regarding the effect of the rate increases in relation to the emergency condition, so that as soon as possible revision may be made.

XVII.

The importance of the matter involved, the complex situation concerned, and the detailed analysis of accounting data which it has been necessary to make justify a summary of the situation and findings.

(1) There has been during recent years a steady increase in material and labour costs in the operation of the Bell Telephone Company.

(2) The company has carried these costs during these years.

(3) Beginning, however, with October, 1918, there has been a very great increase in wage costs, which still continues and which the company cannot properly carry with its present rates.

(4) These wage costs, computed on a yearly basis, represent a wage increase of over \$1,500,000. While there has been increase in gross revenue, there has been a sharp decrease in net. The operating ratio since the increased wage costs came in in October, 1918, is over 90 per cent.

(5) In meeting the increased costs prior to October, 1918, the company did not keep up maintenance in the same ratio as the use of telephone instruments demanded. There is, therefore, to be dealt with not only the question of increased material and wage costs but also the item of deferred maintenance.

(6) Non-operating revenue has assisted hitherto in carrying the interest and dividend charges. The Northern Electric, from which a dividend of \$210,000 was received in 1917—which item was also set out as included in the anticipated total revenue for 1918—passed its dividend in 1918 and was unable to meet its fixed charges. Consequently this item of non-operating revenue is unavailable, to meet the charges by way of interest or dividends.

(7) The company has since October, 1918, been earning on its outstanding securities less than 4 per cent.

(8) There is an admitted need for an expenditure of \$7,000,000 for replacements and new construction. While the carrying charges of this are not set out as an item in the increases asked for, the existing situation affects the ability of the company to finance this necessary amount.

(9) The reserves of the company, which are large, are not in cash, but are invested in the plant. This is admittedly good business practice and at the same time lessens the burden of necessary revenues. Since the reserves are so invested; they are, therefore, not available to pay dividend or interest charges, or to provide replacements or extensions.

(10) The application has been treated substantially as a wage cost application. Independent, therefore, of the factor of material costs, there is an increased wage cost of approximately \$1,550,000 to be met.

(11) There is an emergency situation existing.

(12) The burden of the emergency should be divided between the Bell Company and the public.

(13) The company, as part of its contribution, must of necessity bear the costs which have accrued since the beginning of the present year and up to the time the rate increases become effective.

(14) The company, as an emergency measure, should make a contribution from its allowance for depreciation, said contribution to be computed on the basis of the difference between 5.7 per cent and the existing percentage, thus giving a sum of approximately \$330,000 per annum.

(15) The connection charges as asked for, and not objected to, cannot be allowed because of the limitations of the Bell Telephone legislation.

(16) The moving charges as asked for, and not objected to, are allowed.

(17) The contribution from the emergency depreciation ratio and the moving charges will amount to approximately \$450,000 per annum. In addition, as pointed

out, the company has to bear the increased costs since the beginning of this year and pending the rate increases. This would represent at least $\frac{1}{2}$ of the total in the present year.

(18) Of the total rate increases found necessary, there is approximately \$1,100,000 to be met by increases in long distance and exchange revenues.

(19) The long distance rates as filed are not objected to and may be allowed. The company asked for 20 per cent increase in exchange rates. A 10 per cent increase in exchange rates is deemed adequate. The long distance rates, as allowed, and a 10 per cent increase in exchange rates are considered sufficient to provide the sum of \$1,100,000.

(20) The situation being treated as an emergency one, the Board retains the conduct of the case, and will take steps to obtain necessary information so that revision of the emergency rates may be dealt with as soon as possible.

April 24, 1919.

COMMISSIONER GOODEVE:

I agree with the conclusions arrived at as set out in the summary.

The CHIEF COMMISSIONER:

I was obliged to be in the West while this case was in progress, consequently did not hear the argument, and was not present when much of the evidence was given.

With a wage increase approximating one and one-half million dollars a year, and having no reference whatever to increased cost of supplies, which may come down, it was evident that the company required relief. Under the circumstances there is nothing that I can now usefully add.

MAY 9, 1919.

The DEPUTY CHIEF COMMISSIONER:

I concur in Commissioner McLean's judgment on account of the large increase in the cost of labour, but do so reluctantly and only on the express condition that it will have effect for one year only from the date of issue.

I consider that the company's tariffs are obsolete and not in touch with existing circumstances, and should be remodelled. They certainly present inequalities, if not absolute discriminations, showing apparently that certain districts and cities are paying more than others under substantially similar conditions.

A flat percentage increase will only accentuate the grievances of those who, in their opinion, are already paying more than they should because of the fact that others are not bearing their share of the burden. Under the circumstances, a complete revision appears to be an immediate necessity, in order that the data and evidence furnished the Board may be utilized.

The tariff should be recast in such a manner that it will put the telephone within the reach of every purse. Several friends, or members of the same family, could arrange to use a party line (as private phone) costing each of them an average of two, three or four dollars a year. This would give more value to the business phone, which in turn could be increased.

Measured lines should also exist. For example, is it fair that a small suburban grocer, say of the city of Montreal, should pay as a business rate, the same as the Bank of Montreal; and a small dealer in Toronto as much as the T. Eaton Company? I think this would be in the interest of all concerned, particularly of the Bell Company.

For this reason, I am of the opinion that the application should remain before the Board, and the case reopened on a larger scale. The company should be allowed to procure the necessary information for a thorough revision of its tariffs, based on an up-to-date inventory and appraisal of its assets, and all parties brought in the case.

OTTAWA, May 8, 1919.

MR. COMMISSIONER BOYCE:

The application of the Bell Telephone Company of Canada for permission to increase by 20 per cent its rates, and for the special allowances mentioned in its application, specified with particularity in the exhaustive judgment of Mr. Commissioner McLean, occupied, in its hearing by this Board, a period extending from November 5, 1918, to February 22, 1919. During that time the affairs of the company were subjected by the Board, and by various experts, pro and con, to the strictest examination and most searching analysis possible. All the abnormal conditions upon which the application is based are due to high prices of materials and labour, involving greatly increased operating cost, and are due entirely to war conditions. Those conditions, which have everywhere brought sharp increases in costs of operation, wages, and material, involving greatly increased cost of production, are recognized universally in every branch of commercial industry and, naturally, have likewise affected all public utility corporations.

This telephone company, a large public utility, has been able, up to the present time, to combat these conditions by reason of its long establishment, steady growth, expanding business, large resources and credit. In every branch of its operation and service it has had to meet during the last three or four years a steadily increasing scale of cost of operation and cost of material essential to the carrying on of its business. In the case of industries and commercial enterprises generally, a sharp increase in the cost of production has been immediately reflected by largely increased price of the product to the consumer, giving increased revenue to the producer equivalent to the extra cost entering into its production. But, while in the case of this public utility, it suffers these adverse conditions equally with, say, a manufacturing concern, its ability to offset the strain of increased cost of material and labour is restricted by the functions and duties of this commission as regards corresponding increase in its rates to meet the adverse conditions mentioned.

In the voluminous evidence, documentary and oral, which has been submitted to this Board for consideration in connection with the company's application, the above difficulties have nowhere been challenged. Those who have opposed the application in the interests of the public have directed their efforts to showing that to meet the emergency created, rather than apply for increase of rates, the telephone company should resort to the expedient of drawing upon reserves which have been accumulated, to provide for depreciation of its plant and for other purposes.

The functions of this Board are, as I take it, upon an application of this kind, first, to endeavour to protect the public interests. Concern for the welfare and profit of the shareholders of the private corporation operating that utility, is an incident only so far as it is necessary to safeguard the public interests, having regard to the palpable truth of the proposition, which cannot be questioned, that if the rates and tolls charged for the service given by that public utility do not provide as well for all operating and other expenses, and a safe reserve to provide against depreciation, and to insure the efficient maintenance of its plant, a fair margin of profit on the money invested by its shareholders, the rates and tolls are inadequate for the service of the public by such utility, and a revision should be made after careful scrutiny of the position of the company. That provision should be made, not in the interests of the shareholders, except incidentally, as above, but of the public, whose interests are to suffer by the weakening of the company by the adverse conditions mentioned, endangering the breaking down or impairment of the service in which the public is interested. The interests of the public are not distantly related in this respect to those of the shareholders.

In the exercise of these functions, the main question to be considered is *not* whether the public in one community is receiving service at a given rate far below that for which another community receives the same service. The fact that, e.g., the rates in Detroit and Buffalo exceed, perhaps double, those in Toronto and Montreal, for much the same area, quantum, and value of service, is not an argument in favour

of increasing the Toronto-Montreal rates. In each case, the public is entitled to receive, and it should be the care of the public utility commission exercising jurisdiction in each case, to see that the public *does* receive, that service of the highest possible efficiency and value, at the lowest cost, compatible with the principles mentioned, viz., those of a fair return in excess of expenditure and reserves required to insure the stability and renovation of the plant in a condition for guaranteeing that service to the public. The conditions in each case must govern the rate making, and justify rate increases or decreases.

Argument in opposition to the application was directed against the policy pursued by the telephone company of accumulating substantial reserves to meet depreciation, obsolescence, and wear and tear of plant, and other contingencies, which the company, with reason, contended were essential for the purposes of assuring and continuing an expansive service in an efficient condition. The principle involved was not questioned, but it was contended that these accumulations were much in excess of what was required for the purpose for which they were created. It is not only the right of the company to make such provision, but it is its plain duty, not only to its bond and stock holders, but, in the case of a public service corporation to the public. (*Knoxville v. Knoxville Water Co.*, 212, U.S. p. 13, 1909). To adopt a different course would leave to the company the alternative of procuring new capital by the issue of new bonds or stocks, thereby creating an additional annual charge upon the company's revenues, with the consequences indicated by Mr. Commissioner McLean, at page 22 of his opinion.

Much expert testimony was directed in the endeavour to show that by reason of the accumulation by the telephone company of depreciation and other reserves upon a too liberal ratio to plant values, there ought to be available out of the excess, sufficient provision to tide the company over present unfavourable conditions. While these arguments were most ingeniously directed in various forms, they appeared to me to lack the force of definite precedent and authority. By that I mean, that the question as to the exact ratio which the depreciation reserve should bear to the value of the plant employed is one upon which reference to history, extending over many years, both on this continent and in Europe, shows to be one in which widely divergent opinions have been expressed by experts, engineers, and by the judgments of public utility commissions.

As is pointed out by my brother commissioner in his judgment, the evidence of two eminent telephone public utility experts, Messrs. Dagger and Bemis, called in opposition to the application, emphasizes the impossibility of arriving at a definite basis of depreciation, applicable to each case, by virtually stating that in each case the question was one of opinion and good judgment. If the telephone company, in making provision for reserves, erred somewhat on the side of liberality, having in view a rapidly expanding business and apprehending conditions in plant changes, etc., which might make large calls upon its depreciation reserve, I would be reluctant to call its judgment in question, except in what might be an exaggerated case. I have been unable to come to the conclusion, from all that has been submitted in this case, that the provisions made by the company for reserves are so grossly excessive that they could, with safety, or should be, as substantially depleted as was contended, in order to meet the present emergency. Certainly the substantial reserves accumulated are of substantial benefit to the public, by assuring the efficiency of plant for continued service.

Mr. Dagger points out, in his report, exhibit No. 38, at p. 15:—

“While to-day the company may claim with some degree of justice that they (reserves) are necessary to provide for the future welfare of the plant, it must not be overlooked that if a policy of public ownership of telephones was adopted, and this is not at all improbable, the public would have the pleasure of buying, at possibly enhanced prices, a large proportion of the plant created out of the profits furnished by themselves; and the shareholders would reap a correspondingly large harvest which they have not sown.”

That proposition is subject to some dispute. It is contended by many experts as a sound economic principle, that these reserves so constituted, belong not to the shareholders, but to the plant. This is not, however, necessary to the decision of this case.

The factors that loom large in justifying some increase of tolls and rates to this telephone company are the very sharp increase in operating cost and in labour and material. The opinion of many financiers and economists in the United States principally, and some in Canada, is to the effect that there will be a reduction in both these factors and that the trend is downward. There does now seem to be apparent a decline in the cost of materials. That decline, although not very marked now, it is to be hoped will be greater, and that there may be some decline in the cost of operation generally.

I agree that the condition of the company as disclosed in the examination to which it has been subjected in this inquiry and as analysed in the judgment of my brother commissioner, shows the necessity for some relief, even though that relief be of a purely temporary character.

Applications of a similar character have been very common in consequence of war conditions. A report is filed (exhibit No. 25) of decisions of state commissions affecting rates, reported for a period from May 18, to July 13, 1918, only, and as regards electrical companies, the report shows that out of about forty applications during that period, to various state commissions for increase of rates, there were only two cases in which increases were denied. In thirty-four cases the increase was allowed, and in the balance of cases temporary or emergency increases or sur-charges were directed.

But, as is pointed out by my brother commissioner, in quoting the cases cited by Mr. Fairty, the high prices being abnormal and due to war conditions, the public utilities should not expect that the public shall bear all the burden of such abnormal conditions. It is a case for adjustment of the burden so that it will bear as lightly as possible on the public, with a due regard to maintenance by the company, for the benefit of the public, of the efficiency of the service to which the public is entitled. I think that the judgment of Mr. Commissioner McLean provides that method of dealing with this emergency in as fair and equitable a manner as the circumstances and conditions of the company will permit.

It may be that if the emergency conditions necessitating this action continue, the company may find that the increases allowed are not adequate to meet the necessities of the emergency. I trust that this will not be so. On the other hand, the public affected in any district or area, may feel that conditions are such, or in a short time may grow to be such, that the increased burden, light though it be, is no longer necessary. In either case the way is open for rehearing and re-adjustment, according to the necessities of the situation, as it may change.

In agreeing, as I do, with the conclusions arrived at by Mr. Commissioner McLean, as to the most equitable method of meeting the emergency conditions, I would express the hope that, at no very distant date, and in the most effective and satisfactory manner possible, the inconsistencies and injustices (as well as alleged discriminations) in the various schedules of the company's rates, applicable to different districts and toll areas indicated by Mr. Hagenah and referred to by others, may be so equitably adjusted in the interests of the public under the direction of this Board, that the most efficient possible service in each locality of the character and extent available, will be furnished at the lowest possible cost.

OTTAWA, April 30, 1919.

GENERAL ORDER No. 264.

In the matter of the application of the Bell Telephone Company of Canada, hereinafter called the "applicant company," for an Order permitting an increase in rates of twenty per cent (20 per cent) on all tolls, rates, and charges for exchange telephone service; for a revised schedule of long distance tolls; for a charge to be known as "service connection charge"; and a charge for moving telephone stations and other equipment; all as set forth in the tariffs of tolls accompanying the application and filed with the Board under Case No. 955.

TUESDAY, the 13th day of May, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa on the 8th and 22nd days of January, 1919, and the 12th day of February, 1919, and in Toronto and Montreal on the 13th and 16th days of January, 1919, respectively, in the presence of counsel for the applicant company, the Union of Canadian Municipalities, and the corporations of the cities and towns following, namely: Montreal, Toronto, Hamilton, Ottawa, Quebec, London, Windsor, Brantford, Outremont, Westmount, Levis, Granby, Brockville, and Verdun; the Boards of Trade of Toronto, Montreal, and Cornwall; the Municipalities of North Gower and Marlborough, and the Proprietors' League of Montreal being represented at the hearings, the evidence of experts offered both in support of and in opposition to the application, and what was alleged; and upon reading the written statements, reports, and submissions of experts filed on behalf of the applicant company and the respondent corporations, as well as the reports of chartered accountants, made after examination of the applicant company's books which were available to them by the direction and under the authority of the Board's Order; no objection being made to the long distance tolls as filed,—

It is ordered: That: (a) the revised increased tolls for long distance service, (b) an increase of ten per cent (10 per cent), instead of twenty per cent (20 per cent), on all tolls, rates, and charges for exchange telephone service and charges incidental thereto, and (c) the charges for moving telephone stations and other equipment, all as set out in the application filed with the Board under said Case No. 955, be, and they are hereby, authorized and allowed.

2. That the "service connection charge," so-called, as applied for be disallowed.

3. That where exchange services are at present installed, the increased tolls hereby authorized and allowed may become effective on July 1, 1919.

4. That the increased tolls hereby authorized and allowed for long distance service, for moving telephone stations and other equipment, and where new exchange services are installed subsequent to the date of this Order and prior to July 1, 1919, may become effective on one week's notice.

H. L. DRAYTON,
Chief Commissioner.

Application of the city of Vancouver for an Order directing the Vancouver, Victoria and Eastern Railway and Navigation Company to remove the interlocking system at the crossing of the British Columbia Electric Railway on Powell street, Vancouver.

Case No. 805.

JUDGMENT.

The CHIEF COMMISSIONER:

This matter comes up on an application made by the city of Vancouver for the removal of the interlocker which now protects the movement of street cars on Powell street from the movement of Great Northern Railway Company equipment over the crossing of the tracks of the Great Northern over Powell street and the tracks of the British Columbia Electric Railway Company, and necessary to reach the Great Northern dock to the north.

It is impossible to give effect to the application. To do so would be to imperil the lives of passengers in crowded street cars. The general public cannot be placed in such a position of danger by any Order of a commission charged with the duty to protect public safety. On the other hand, the situation is one which ought not to obtain.

At the close of the hearing, which was held in Vancouver on February 14, I went down to the crossing and inspected the whole layout. I found that the real difficulty did not consist in the initial movement of freight to the north, but lay in the fact that the switching leads operating the company's docks were situated such a short distance to the north that every time these switching leads were operated the derails were thrown and street cars could not be operated over the crossing, although no movement was actually made over the highway.

This is a condition which ought not to be allowed to continue. Before a remedy, however, could be reached the question had to be taken up with the different railway companies interested and a study made of the layout as a whole. This has since been done. The proper solution of the question entails not only the crossing difficulty, but involves also the all-important question as to how the Government dock can be reached by the Government Railway. Access, at the present, there is none, and it is of course absolutely important that this access should be obtained.

The problem is to arrive at the total elimination of the use of derails and delay to street cars for the switching purposes of the Great Northern, and at the same time to get access to the Government dock for the Canadian National Railways. The one-hundred-foot right-of-way of the Canadian Pacific Railway Company, at the point in question, abuts on the northerly limit of Powell street. Use has to be made of the lands of the Canadian Pacific in order to give the Great Northern access to its docks, and in order to enable the Canadian National Railways to reach the Government docks.

Any rearrangement of tracks has to be made at the expense, in part, of that company's property. In my opinion, in order to arrive at the two necessary results, the present crossing of Powell street should be taken up. This would mean that the existing tracks of the Great Northern would stop at the northern boundary of the Dominion Biscuit Company's property.

The Canadian National Railways have running rights over the Great Northern Railway to a point just south of Hastings street. The Canadian National ought to extend that line in a northerly and easterly direction and cross Powell street as shown by its plan No. 530-123.19. This construction will be carried over the two main line tracks of the Canadian Pacific and connect with its service tracks.

The Great Northern Railway Company ought to build a track as shown on the plan, running approximately east to the land of the British Columbia Sugar refinery, which would give access to the Great Northern dock from the Canadian Pacific service track, and enable the Great Northern's shunting operations to be carried on without burdening Powell street with the movement.

Farther east a line should be constructed creating an interchange track between the Canadian Pacific and the Canadian National Railways, giving access to the Hastings Mill spurs, as shown by the said plan.

Farther east again a system of lines, according to the plan, to be constructed, commencing at Woodland Drive, leading to the Government dock property, giving proper railway access to this property.

As business increases it will become necessary to provide a second additional service track on the lands of the Canadian Pacific Railway Company, but at the present this track will have to be built to the north of the present service track of the Canadian Pacific. This construction will necessitate the removal of the fence of the British Columbia Sugar refinery, which, however, is erected upon railway property.

In so far as the costs of the proposed construction are concerned, the Canadian National system ought to be at the expense of putting in the new lead across Powell street and of all the work to the east thereof, while the cost of the new construction to the west, which is entirely for the purpose of accommodating the business of the Great Northern Railway Company, should be borne by the Great Northern.

In so far as the costs of the interlocking plant are concerned, the new track across Powell street is not necessary to the elimination of the shunting operations of the Great Northern, which now obstruct street railway operation. The same result could be obtained by continuing the present crossing and constructing a track to be used as a switching lead on the north side of the Canadian Pacific tracks and ending at the line of the sugar refinery's property.

The real necessity of the substituted crossing over Powell street is to enable the Canadian National Railways to reach the Government dock. The present interlocking plant is quite sufficient for the purposes of the Great Northern. Under these circumstances the Canadian National Railways will pay the whole cost of the interlocking system. The cost of maintenance will, however, be divided in equal proportions between the Great Northern and the Canadian National companies. The Great Northern at the present pays the whole cost.

The city, the British Columbia Electric, and the Canadian Pacific are all senior to both the Great Northern and the Canadian National Railways, and will not make any contribution to the cost of the work.

The companies will adjust themselves all questions as to the use of the Canadian Pacific property. In case of disagreement, the matter may be taken up with the Board. The work, however, must not be delayed by reason of any railway difficulties, but must proceed with all despatch. Detail plans to be filed by the Canadian National Railways of the new work, consisting of the substituted crossing of Powell street and to the east thereof, and by the Great Northern of the work to the west.

MAY 13, 1919.

Commissioner Rutherford concurred.

Complaint of the Taylor Milling & Elevator Co., Lethbridge, Alta., "re" classification of Dr. Rusk's Chick Food.

File No. 19367-89.

JUDGMENT.

The CHIEF COMMISSIONER:

This case was heard at the sittings of the Board held in Lethbridge, February 24, when the matter was in part dealt with at the hearing.

At the hearing the companies were tentatively directed to classify the chick food commodity in question as fourth-class in less than carloads and eighth-class in carloads. The company has since put in a tariff covering the l.c.l. movement at the rate which was mentioned at the hearing.

The company objects to classifying the product in the eighth-class for the carload movement. The further consideration the matter has had supports, however, the ten-

tative conclusion arrived at. The ingredients of this particular poultry food are given as follows, and the appropriate classification for such ingredients is also shown:—

	l.c.l.	c.l.
Corn, wheat..	4th	8th
Oyster shells..	4th	8th
Millet seed..	3rd	5th
Charcoal..	4th	7th
Dried meat scraps..	4th	none

As a matter of fact dried meat scraps take no classification. The commodity may be considered as properly covered, however, by the rating for refuse meat from butchers' shops, which is in the fourth class.

Reliance is placed by the applicants on the Board's judgment in the case of the Jenkins Mfg. Co., of London, Ont. (file No. 19367-57), which related to calf meal. Its constituents were wheat, corn, oats, shorts, oil cake, flaxseed, salt, and corn flake siftings, all fourth and eighth-class articles, except the salt, which is rated still lower, namely, fourth and tenth. Three of the present applicants' ingredients are rated fourth and eighth also; but millet seed and charcoal are classified higher, and the meat scraps have no carload rating at all. The greater resemblance to grain products in the former case is, therefore, apparent.

As a matter of fact, I was incorrect at the hearing in adopting as correct the applicants' contention that all the ingredients of the food in question took fourth-class, as millet seed, as above indicated, takes the third, and under the ordinary rule of classification the chick food in question might well, therefore, take the third-class rating. Each commodity, however, has to be regarded on its own basis. As represented, however, instead of millet seed itself the screenings only are used, the screenings, of course, being of less value than the clean seed.

The tariff from Lethbridge, which the company has filed, reads as follows:—

"Poultry food; ground meat (dried), ground bone, alfalfa meal, cut clover, grain (whole or cracked), grain screenings, millet screenings, crushed shells, sunflower seed, grit and charcoal:—

In bags or barrels..... l.c.l. fourth-class."

The fourth-class rating under which the l.c.l. shipments will move, and which the Board is of the opinion the applicants were entitled to, is the classification for grain and millstuffs in less than carloads. I see no reason why similar treatment should not be given this chick feed and an addition made to the tariff recently filed as follows:—

"In packages named, carloads, minimum weight,
30,000 pounds eighth-class."

In addition to the relief above granted the applicants also desire that chick feed shipped in carload lots by them to millers or other consignees may be mixed by such consignees with their shipments of grain products in carloads, and take the peculiarly low-carload rate that these commodities bear.

Grain and its products, of course, are one of the country's main staples; the rates are relatively low, and the list of articles that may be so shipped is a liberal one. Applicants say the principle underlying mixed carload facilities was evidently intended to enable farmers' associations to secure carload rates on all their livestock and poultry requirements; but this mixing privilege really antedated these western associations, if, indeed, it did not antedate the settlement of the west itself. If this feature of the application were granted, then in fairness to those millers who may not be shipping poultry food the full minimum load of straight grain products should be insisted upon, in which case the extra weight of poultry food would necessarily have to be restricted. I consider that the reduction from third to fourth-class ought to be sufficient for these extraneous enclosures.

May 20, 1919.

Commissioner Rutherford concurred.

GENERAL ORDER No. 263.

In the matter of the question of standardizing the regulations to be placed in effect on all railways operating in Canada governing the handling of guard rails, vestibule doors, and platforms on passenger cars.

File No. 22338.

WEDNESDAY, the 7th day of May, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

HON. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Whereas, the attention of the Board has been called to a number of accidents—in some instances fatal—caused by failure to keep the vestibule doors on passenger cars closed;

Upon reading what has been filed by the Canadian Railway Association for national defence on behalf of railway companies operating in Canada, and upon the report and recommendation of the Chief Operating Officer of the Board, and in pursuance of the powers conferred upon it by sections 30 and 269 of the Railway Act and all other powers possessed by the Board in that behalf,—

It is ordered: That every railway company subject to the legislative authority of the Parliament of Canada, operating a railway by steam power, shall strictly conform to the following rules and regulations governing the handling of guard rails, vestibule doors, and platforms on passenger cars which are hereby approved, namely:—

“Through and local (except suburban) trains, double track, right-hand operation—

When running, all doors and platforms except those on rear right hand side of last car are to be kept closed. When standing, the right hand doors and platforms, only, are to be opened, except when necessary to open left-hand doors to receive or discharge passengers.

Through and local (except suburban) trains, double track, left-hand operation—

When running, all doors and platforms except those on rear left hand side of last car are to be kept closed. When standing, the left-hand doors and platforms, only, are to be opened, except when necessary to open right-hand doors to receive or discharge passengers.

Through and local (except suburban) trains, single track—

All doors and platforms except those on rear of last car are to be kept closed when running.

Suburban trains, double track, right-hand operation—

Doors and platforms on right-hand side of train may be kept open and when open are to be securely fastened. Those on left-hand side must be kept closed except when necessary to open them to receive or discharge passengers.

Suburban trains, double track, left-hand operation—

Doors and platforms on left-hand side of train may be kept open and when open are to be securely fastened. Those on right-hand side must be kept closed, except when necessary to open them to receive or discharge passengers.

Suburban trains, single track—

All doors and platforms may be kept open and when open are to be securely fastened.

GENERAL.

Movable guard rails—

When there are movable guard rails on non-vestibule or open-vestibule cars, guard rails must be kept closed, except that when trains are standing they are to be opened only on the side at which passengers are to be received or discharged.

Vestibule curtains—

When cars are equipped with vestibule curtains these appliances are to be kept closed and are not to be uncoupled until trains stop at terminal or when change is to be made in consist of train.

Observation cars—

When rear car is observation car side gates and platforms must be kept closed when running.

Tail gates, chain or bar—

Tail gate, chain or bar at rear of last car in train must invariably be kept closed.

2. "Suburban trains" as used in this Order means, and applies only to, trains within commutation limits when carrying commutation traffic.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28313.

In the matter of the application of the Grand Trunk Railway Company of Canada, hereinafter called the "applicant company," under section 258 of the Railway Act, for approval of the location and detail plans, No. T68 and No. 5384, dated respectively, March 12, 1919, and March, 1915, showing the shelter to be constructed at Stewarttown, in the township of Esquesing, county of Halton, and province of Ontario, on the 13th district, Barrie division, of the applicant company's railway, on file with the Board under file No. 29252.

FRIDAY, the 9th day of May, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon its being represented to the Board that in constructing the shelter in question to provide the necessary accommodation at Stewarttown with as little delay as possible, the necessity of obtaining the approval of the Board was overlooked, and upon its appearing that no complaints with regard to the said shelter have been made by the municipality of Esquesing,—

It is ordered: That the location and detail plans, No. T68 and No. 5384, dated, respectively, March 12, 1919, and March, 1915, showing the shelter erected by the applicant company at Stewarttown, in the township of Esquesing, county of Halton, and province of Ontario, on the 13th district Barrie division, of the applicant company's railway, be, and they are hereby, approved.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28315.

In the matter of the application of the Grain Claims Bureau, Limited, on behalf of grain shippers in Western Canada, hereinafter called the "applicant" for an Order directing railway companies under the jurisdiction of the Board to show on bills of lading covering grain shipped from points in the provinces of Manitoba, Saskatchewan, and Alberta, the depth in inches of the grain loaded in the cars, or, if this information is shown on the bills of lading by the shippers, to authorize their agents, after examination of the cars, to sign bills of lading whereon this record is shown.

File No. 20070.

WEDNESDAY, the 14th day of May, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Winnipeg on the 3rd day of March, 1919, in the presence of counsel and representatives for the Canadian Pacific and Grand Trunk Pacific Railway Companies and the Canadian National Railways, the applicant being represented at the hearing, and what was alleged; and upon its appearing to the Board desirable that no action should be taken upon the application until a further opportunity shall be given of judging as to the practical effect of the General Order of the Board No. 205, dated August 15, 1917, requiring railway companies to stencil inches on the inside walls of cars used in the grain traffic in the Provinces of Manitoba, Saskatchewan, and Alberta, so as to show the depth in grain loaded therein, as set forth in the Order,—

It is ordered: That the application be, and it is hereby, dismissed.

H. L. DRAYTON,
Chief Commissioner.

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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ORDER No. 28349.

In the matter of the application of the Great Northern Railway Company, hereinafter called the "applicant company," for permission to discontinue the train service between Grand Forks and Phoenix, on the Phoenix branch of the Vancouver, Victoria, and Eastern Railway and Navigation Company's line of railway.

File No. 1333.

FRIDAY, the 2nd day of May, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

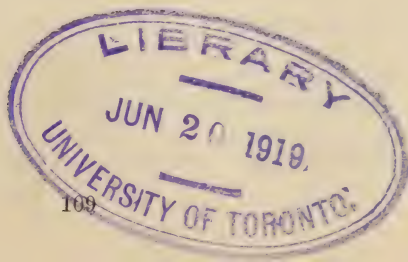
A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That, upon the understanding and subject to the express condition that a satisfactory freight service be furnished over the portion of railway in question when required, the applicant company be, and it is hereby, granted leave to discontinue the train service between Grand Forks and Phoenix, on the Phoenix branch of the Vancouver, Victoria, and Eastern Railway and Navigation Company's line of railway.

H. L. DRAYTON,
Chief Commissioner.



GENERAL ORDER No. 262.

In the matter of the General Order of the Board, No. 151, dated November 8, 1915, prescribing the regulations governing baggage car traffic for the observance of every railway company within the legislative authority of the Parliament of Canada, as amended by General Orders Nos. 179, 181, and 191, dated respectively, January 29, February 3, and May 26, 1917; and the application of the Canadian Pacific Railway Company for an Order further amending Rule 26 (d) of the said regulations.

File No. 23328.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*A. S. GOODEVE, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

THURSDAY, the 8th day of May, A.D. 1919.

A question having been raised as to whether, in view of the punctuation of the section, the words "otherwise the carrier shall not be liable" apply only to the case of damage or delay, as set out in the second sentence, and not to non-delivery, as set out in the first sentence of the rule; upon reading what is alleged in support of the application to amend, and to make the intention clear,—

It is ordered: That Rule 26, sub-section (d) of the Regulations Governing Baggage Car Traffic be, and it is hereby, further amended by striking out the comma after the word "receptacle" and before the word "otherwise" in the last line of the sub-section and substituting therefor a period, making the words "otherwise the carrier shall not be liable" a separate sentence.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28339.

In the matter of the Order of the Board No. 27741, dated October 1, 1918, requiring the Quebec, Montreal, and Southern Railway Company to provide a mixed train service between Noyan Junction and Lacolle Junction as specified in said Order as amended by Order No. 27864, dated November 19, 1918.

File No. 18727.2.

MONDAY, the 19th day of May, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*A. S. GOODEVE, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon its being made to appear to the Board that there is very little, if any, passenger traffic carried by said service and that the Quebec, Montreal and Southern Railway Company does not now require to send the train to Rouses Point for the purpose of housing and caring for the engine, and upon the report of the Chief Operating Officer of the Board,—

It is ordered: That for the present and until the 31st day of October, 1919, the Quebec, Montreal, and Southern Railway Company is hereby relieved from complying with the requirements of the said Order.

2. That, unless otherwise ordered, the Quebec, Montreal and Southern Railway Company shall be required to give effect to said Order No. 27741, as amended by Order No. 27864, between the 31st day of October and the 1st day of May following in each year.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28348.

In the matter of the special commodity rates on glass bottles, in carloads, from Wallaceburg, Ont., to London, Kitchener, Hamilton, and Toronto, Ont., and Montreal, Que., effective under the Board's judgment of July 30, 1904; the supplemental schedules filed by the Canadian Pacific and Grand Trunk Railway Companies on June 24, and 27, 1918, respectively, announcing the cancellation on July 25, and 28 of the commodity rates on bottles from Toronto, Hamilton, and Montreal; and the Order of the Board No. 27438, dated July 17, 1918, made upon the application of the Montreal Board of Trade, suspending the operation of said supplemental schedules pending hearing at a date to be fixed by the Board; and the later application of the Canadian Pacific and Grand Trunk Railway Companies for leave also to cancel the said commodity rates from Wallaceburg.

File No. 490.

MONDAY, the 19th day of May, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

HON. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. MCLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, September 10, 1918, in the presence of counsel for the Canadian Pacific Railway Company, the Canadian Manufacturers' Association, and the Transportation Bureau of the Montreal Board of Trade being represented at the hearing, and what was alleged; and upon reading the exhibits filed in support of the application and in opposition thereto, and the report of the Chief Traffic Officer of the Board,—

It is ordered: That said Order No. 27438, dated July 17, 1918, suspending the Canadian Pacific Railway Company's Supplement No. 77 to Tariff C.R.C. No. E. 3210, and the Grand Trunk Railway Company's Supplement No. 73 to Tariff C.R.C. No. E. 3426, cancelling the special commodity rates on glass bottles, in carloads, from Hamilton and Toronto, Ont., and Montreal, Que., be, and the same is hereby rescinded; and that leave be granted the Canadian Pacific and Grand Trunk Railway Companies to cancel the special commodity rates on bottles, in carloads, from Wallaceburg, made effective in pursuance of the said judgment of July 30, 1904; the said cancellations to take effect simultaneously.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28342.

In the matter of the application of the Canadian Pacific Railway Company, as lessee of the New Brunswick Railway Company, hereinafter called the "applicant company," under section 261 of the Railway Act, for authority to open, for the carriage of traffic, its second main line track between Fairville and West St. John, from mileage 0.07 to mileage 1.11, on its West St. John subdivision.

File No. 1194.1.

TUESDAY, the 20th day of May, A.D., 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Engineer of the Board, and the filing of the necessary affidavit,—

It is ordered: That the applicant company be, and it is hereby, authorized to open, for the carriage of traffic, its second main line track between Fairville and West St. John, from mileage 0.07 to mileage 1.11, on the applicant company's West St. John subdivision, in the province of New Brunswick.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28351.

In the matter of the application of the city of Vancouver, hereinafter called the "applicant," for an Order directing the Vancouver, Victoria, and Eastern Railway and Navigation Company to remove the interlocking plant at the junction of its railway with the railway of the British Columbia Electric-Railway Company, Limited, on Powell street, in the city of Vancouver.

Case No. 805.

WEDNESDAY, the 21st day of May, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Vancouver on the 6th day of June, 1918, and the 14th day of February, 1919, in the presence of counsel for the applicant and the Vancouver, Victoria, and Eastern Railway and Navigation Company, the British Columbia Electric Railway Company, Limited, being represented at the hearings, and what was alleged; and upon reading the further written submissions filed and the reports of an Inspector of the Board, and its Chief Operating Officer,—

It is ordered: That the present crossing of Powell street, in the city of Vancouver by the railway of the Vancouver, Victoria, and Eastern Railway and Navigation Company be taken up; the existing tracks of the said railway company to stop at the northern boundary of the property of the Dominion Biscuit Company; the Canadian National Railways to extend the line of the Vancouver, Victoria, and Eastern Railway and Navigation Company, over which it has running rights to a point south of Hasting street, in a northerly and easterly direction crossing Powell street and the two main line tracks of the Canadian Pacific Railway Company and connecting with its service tracks at the point and as shown on the plan No. 530-123.19 on file with the Board under said case No. 805, the Vancouver, Victoria, and Eastern Railway and Navigation Company to build a track running approximately east to the property of the British Columbia Sugar Refinery, as shown on the plan, to give access to the Van-

couver, Victoria, and Eastern Railway and Navigation Company's dock from the service track of the Canadian Pacific Railway Company and to enable the said Vancouver, Victoria, and Eastern Railway and Navigation Company to carry on its shunting operations without burdening Powell street with the movement; an interchange track to be constructed to the east between the railway of the Canadian Pacific Railway Company and the railway of the Canadian National Railways from which access shall be given to the Hastings Mill spur, as shown on the said plan; a system of lines, commencing at Woodland Drive and leading to the Government dock property, giving proper railway access to this property, as also shown on the said plan, to be constructed to the east of such interchange track, a second additional service track on the lands of the Canadian Pacific Railway Company to be provided as and when business requirements demand.

2. That the cost of constructing the new lead across Powell street and of all the work to the east thereof be borne and paid by the Canadian National Railways; the cost of the new construction to the west thereof to be borne and paid by the Vancouver, Victoria, and Eastern Railway and Navigation Company; detail plans of such work to be filed by the Canadian National Railways and the Vancouver, Victoria, and Eastern Railway and Navigation Company, respectively, for the approval of an Engineer of the Board; the Canadian National Railways to pay the whole cost of constructing the interlocking system to be installed; the cost of maintaining the said interlocking plant to be borne and paid one-half by the Vancouver, Victoria, and Eastern Railway and Navigation Company and one-half by the Canadian National Railways; all questions as to the use of the property of the Canadian Pacific Railway Company to be adjusted by the companies interested, and, in case of dispute, referred to the Board for settlement; the work herein required to be done to be proceeded with without delay and completed with all reasonable despatch.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28362.

In the matter of the Order of the Board No. 27241, dated May 21, 1918, directing the Canadian Pacific and the Ottawa and New York Railway Companies to provide a train service at Finch, Ont., as therein set forth, as amended by the Order of the Board No. 27392, dated July 2, 1918.

File No. 20632.

MONDAY, the 26th day of May, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the Canadian Pacific Railway Company's timetable, effective June 1, 1919, showing:—

Eastbound Local Train No. 30, from Perth, due at Finch at 9.02 a.m., instead of 9.47 a.m.;

Westbound Local Train No. 35, due at Finch at 9.08 a.m.;

Eastbound Local Train No. 36, due at Finch at 5.50 p.m.;

all daily, except Sunday, be, and it is hereby, approved.

2. That the Ottawa and New York Railway Company's train service as follows, namely:—

Train No. 21 from Ottawa, due at Finch at 9.47 a.m.;
 Train No. 20 from Tupper Lake, due at Finch at 9.47 a.m.;
 Train No. 23 from Ottawa, due at Finch at 5.50 p.m.; and
 Train No. 22 from Santa Clara, due at Finch at 5.50 p.m., for Ottawa.

be, and it is hereby, approved.

3. Any one of said trains arriving first at Finch must be held twenty minutes, when necessary, to take forward three or more passengers from a train of the other company, if by such delay connection can be made with such train.

4. That the said Orders Nos. 27241 and 27392, dated respectively May 21 and July 2, 1918, be, and they are hereby, rescinded.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28355.

In the matter of the application on behalf of the National Dairy Council for an Order suspending the Canadian Pacific Railway Company's Tariff C.R.C. No. E. 25, to take effect June 1, 1919, increasing the rates on milk in passenger or mixed passenger and freight train service; and the application of the Board of Trade of Toronto, Ont., for an Order suspending the Grand Trunk Railway Company's Tariff No. 693, C.R.C. No. E. 2756, effective June 1, 1919, and other similar tariffs, increasing the rates for the transportation of milk in baggage cars.

File No. 16939.13.

WEDNESDAY, the 28th day of May, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, and on behalf of the Canadian Pacific and Grand Trunk Railway Companies; and upon its appearing that other railway companies have filed with the Board similar increased tariffs for the transportation of milk in baggage cars,—

It is ordered: That the following tariffs, namely,—

Canadian Pacific Railway Company's Tariff.....	C.R.C. No. E. 25.
Grand Trunk Railway Company's Tariff.....	C.R.C. No. E. 2756.
Canadian National Railways' Tariff.....	C.R.C. No. E. 29.
New York Central Railroad Company's Tariff.....	C.R.C. No. 249.
Quebec, Montreal, and Southern Railway Company's Tariff	C.R.C. No. 271.
Napierville Junction Railway Company's Tariff.....	C.R.C. No. 113.
Montreal and Southern Counties Railway Company's Tariff	Supplement No. 2 to C.R.C. No. 22.

be, and they are hereby, suspended pending a hearing of the matter at a sittings of the Board to be held in Ottawa on Tuesday, the 10th day of June, 1919.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28383.

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicant," under section 49 of the Railway Act, for an interim Order authorizing the Applicant to operate its trains and establish a service over that portion of the line of the Victoria & Sidney Railway Company from Sidney to the point where it crosses the railway of the Canadian Northern Pacific Railway Company, in the Province of British Columbia.

File No. 15747.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

TUESDAY, the 3rd day of June, A.D. 1919.

Upon reading the application and what is filed in support thereof, and its being represented to the Board that the receiver for the bondholders of the Victoria & Sidney Railway Company, and the residents of Sidney and other places along the line of railway to be served strongly support the application; and that it is the intention of the companies interested to enter into an agreement for the running of the trains of the applicant over the tracks of the Victoria & Sidney Railway Company, and to apply to the Board for a recommendation of the said agreement to the Governor in Council for sanction, as provided by section 364 of the Railway Act,—

It is ordered: That leave be, and it is hereby, granted the applicant to operate its trains and establish a service over the said portion of the Victoria and Sydney line of railway from Sydney to the Canadian Northern Pacific Railway Company's crossing, in the said province of British Columbia, for a period of three months from the date of this Order, pending the entering into of the traffic agreement referred to and the application for sanction thereof, as required by the Act.

H. L. DRAYTON,
Chief Commissioner.

CIRCULAR No. 177.

Case No. 1858—Fire Extinguishers on Steam Railways.

MAY 27, 1919.

Railway companies, operated by steam, subject to the jurisdiction of this Board, are required to furnish the following data, within thirty days of the date of this circular, covering fire extinguisher equipment on their respective lines, viz.:—

	Type of Car.	Total Number of Cars.	Number Equipped One Ex.	Number Equipped Two Ex.	Remarks.
1	Observation				
2	Compartment				
3	Sleeping				
4	Dining				
5	First-Class				
6	Second-Class				
7	Colonist				
8	Combination				
9	Through Mail				
10	Through Baggage				
11	Through Express				
12	Cabooses				
13	Total				

14 What is the average cost of a fire extinguisher at this date ?

15 How many different types in use ? Give names.

In replying, it is desired that the information be given in the order and by the number shown herein.

By Order of the Board,

A. D. CARTWRIGHT,
Secretary.

CIRCULAR No. 178.

Case No. 1858—Fire Extinguishers on Electric Railways.

MAY 27, 1919.

Electric railways, subject to the jurisdiction of this Board, are required to file within thirty days of the date of this circular replies to the following questions with respect to the equipment of their different cars with fire extinguishers, viz.:—

1. If an Order is issued requiring all passenger carrying cars on your railway to be equipped with fire extinguishers.
2. How many cars on your line would be affected?
3. How many cars have you at the present time equipped with fire extinguishers?
4. What is the average cost of an extinguisher at this date?

By Order of the Board,

A. D. CARTWRIGHT,
Secretary.

Car Demurrage Rules—Influenza Epidemic.

Files 1700.234, etc.

OTTAWA, May 30, 1919.

DEAR SIR,—Referring to this matter and to the judgment of the Board, dated November 25, 1918, issued in connection therewith, I am now directed by the Board to notify you that the special treatment given in respect to influenza conditions will terminate on June 15, proximo; but that this, of course, does not in any way affect claims at present under consideration, or claims in respect of relief under the judgment which may be filed prior to June 15, next.

Yours truly,

(Sgd.) A. D. CARTWRIGHT,
Secretary B.R.C.

W. M. NEAL, Esq.,
General Secretary
Canadian Railway War Board
263 St. James St., Montreal.

JUL 1919

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of Laval des Rapides re station facilities, Canadian Pacific Railway.

File No. 25195.

JUDGMENT.

The DEPUTY CHIEF COMMISSIONER:

Laval des Rapides, the municipality making the application herein, is a town located on Isle Jesus, a sister island to the island of Montreal, from which it is separated by one of the Ottawa river's outlets into the St. Lawrence.

Laval is across the river from one of the new suburbs of the city of Montreal; but the stream is so rapid at this point that an ice bridge was never known to form even in the severest of winters. Parc Laval is only connected with the island of Montreal by the railway bridge, from which pedestrians and vehicles are excluded. The place is thriving all the year round, but even more so during the summer. The population is increasing every day, and large educational institutions have been erected in the vicinity.

There is but the one railway on this portion of the island, and people wanting to reach Montreal by another route must go over one of the two bridges located up and down at a distance of two or three miles.

Opposite Laval on the island of Montreal, there is a station called Bordeaux, with a regular agent, where people from Parc Laval and the surroundings have to go when sending or receiving L.C.L. shipments. For those residing in the village of Laval this means a ten-mile trip each time.

Sometime since the company's freight shed consisted of a box car placed on the siding at Laval. It was generally kept under lock and key and people could get their goods by applying to the caretaker; this was the wife of an employee of the company, receiving \$10 a month for her services.

The numerous complaints filed with the Board, and the report made by one of our inspectors, go to show that this mode of handling business proved very unsatisfactory. The box car was occasionally tampered with and goods stolen or destroyed.

The town is now applying for the appointment of a regular agent at Laval des Rapides so that the station may be properly heated and lighted and the traffic properly handled. The company answer that the business does not warrant the expenditure.

The case was heard in Montreal on January 16 last. Various statements were filed by the railway company showing the amount of traffic at this point, and a subsequent report was made by our expert as to the conditions obtaining. Referring to the statements filed by the company, it strikes me that owing to the proximity of Laval des Rapides from Montreal, and the absence of an agent, no record could be kept of the passenger traffic, because people are in the habit of buying their tickets in Montreal.

I know from experience that the traffic is heavy, and would be heavier if the facilities asked for were given. The same remark applies to L.C.L. and express shipments.

After looking over the evidence, our Chief Operating Officer is of the opinion that the shelter and platform erected at this point will do very well for the present, but he suggests that the appointment of a male caretaker whose duties would be to keep the place clean and heated when necessary; the station, as well as both platforms, are already lighted by electricity. The latter should be kept free from snow at all times, and the new caretaker would look after L.C.L. shipments and express matter. The regular telephone installed for communication with Bordeaux could be used for any communication necessary.

I would adopt this view of the matter for the time being. Should the traffic be shown to be greater at any time in the future, I feel sure the company will deem it advisable, and in its own interest, to give the people of Laval des Rapides more complete facilities.

OTTAWA, April 8, 1919.

The CHIEF COMMISSIONER and COMMISSIONER McLEAN: We agree that the recommendation of the Board's Chief Operating Officer as approved in the reasons for judgment, as given by the Deputy Chief Commissioner, should be made effective.

ORDER No. 28416.

In the matter of the application of the Corporation of the Town of Laval des Rapides, hereinafter called the "applicant," for an order directing the Canadian Pacific Railway Company to provide and construct adequate and suitable station facilities at Laval des Rapides, and to appoint and maintain an agent at said station to properly take care of the traffic offering at that point.

File No. 25195.

MONDAY, the 9th day of June, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

HON. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Montreal, January 16, 1919, in the presence of counsel for the applicant and the Canadian Pacific Railway Company, the evidence offered, and what was alleged; and upon reading the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the Canadian Pacific Railway Company be, and it is hereby, directed to appoint a male caretaker at Laval des Rapides, whose duty it shall be to see that the station is kept clean, heated when necessary, and in a proper condition for the receipt and delivery of less than carload freight and express and the accommodation of passengers.

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 265.

In the matter of the application of the Canadian Freight Association, on behalf of the railway companies subject to the jurisdiction of the Board, under section 321 of the Railway Act, for approval of a proposed Supplement No. 12 to the Canadian Freight Classification No. 16, containing certain increased, reduced, and additional ratings on file with the Board under file No. 19367.87.

MONDAY, the 9th day of June, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Notice having been given by the railway companies in the *Canada Gazette* as required by section 321 of the Railway Act, and to the mercantile organizations enumerated in the General Order of the Board No. 153, dated November 4, 1915, and the proposed changes having been considered at a conference of the representatives of the Grand Trunk, Canadian Pacific, and Canadian National Railways, the Canadian Manufacturers' Association, and the Montreal and Toronto Boards of Trade, held at Montreal on the 9th day of April, 1919, when various objections filed with the Board were considered, the proposed changes were agreed to, modified, or eliminated; and upon the consideration of what has been filed, and upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the proposed Supplement No. 12 to the Canadian Freight Classification No. 16, as finally revised and submitted for approval by G. C. Ransom, Chairman of the Canadian Freight Association, by his letter dated May 28, 1919, be, and it is hereby, approved.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28426.

In the matter of the application of the London and Port Stanley Railway Company, hereinafter called the "applicant company," under section 258 of the Railway Act, for authority to construct a new station building at Talbot street, in the City of St. Thomas, and province of Ontario, as shown on the plans, sheets Nos. 1 and 2, dated March, 1919, and the plan dated London, February 7, 1919, on file with the Board under file No. 29397.

MONDAY, the 9th day of June, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of the Chief Operating Officer of the Board, the consent of the city of St. Thomas endorsed on the plan, and upon reading the letter from the city of St. Thomas addressed to the general manager of the applicant company, dated May 1, 1919, a copy of which is on file with the Board,—

It is ordered: That the applicant company be, and it is hereby, authorized to construct a new station building at Talbot street, in the city of St. Thomas, and province of Ontario, as shown on the plans, sheets Nos. 1 and 2, dated March, 1919, and the plan dated London, February 7, 1919, on file with the Board under said file No. 29397.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28417.

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "applicant company," for authority to remove its regular station agent at Baxter station, in the province of Ontario.

File No. 4205.198.

TUESDAY, the 10th day of June, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of an Inspector of the Board, concurred in by its Chief Operating Officer; no objection being offered by the township of Tecumseh to the proposed removal, as appears by letter from the clerk of the said township addressed to the Board, dated May 15, 1919, filed,—

It is ordered: That the applicant company be, and it is hereby, granted leave, pending further order, to remove its regular agent at Baxter station, in the province of Ontario, subject to and upon the condition that a caretaker be appointed to see that the station is kept clean, and, when necessary, heated and lighted for the accommodation of passengers on the arrival and departure of trains, and to care for less than carload freight and express matter.

H. L. DRAYTON,

Chief Commissioner.

ORDER No. 28420.

In the matter of the application of the Eastern British Columbia Railway Company, hereinafter called the "applicant company," for approval of its Standard Mileage Freight Tariff C.R.C. No. 73.

File No. 16985.1.

WEDNESDAY, the 11th day of June, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Commissioner.*

Upon reading what has been filed in support of the application, and upon the report of the Traffic Department of the Board.

It is ordered: That the applicant company's Standard Mileage Freight Tariff C.R.C. No. 73, cancelling C.R.C. No. 16, on file with the Board under said file No. 16985.1, be, and the same is hereby, approved; the said tariff together with a reference to this order to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. L. DRAYTON,

Chief Commissioner.

ORDER No. 28427.

In the matter of the application of the Montreal Board of Trade for disallowance, and of the Canadian Manufacturers' Association for suspension of the proposed cancellation of commodity rates on ferro-silicon from Welland and Thorold, Ontario, and Shawinigan Falls, Quebec; the said proposed cancellation having been suspended by the Order of the Board No. 27841, dated November 7, 1918.

File No. 28981.1.

WEDNESDAY, the 11th day of June, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*Hon. W. B. NANTEL, *Deputy Chief Commissioner.*S. J. McLEAN, *Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Toronto and Montreal on the 13th and 16th days of January, 1919, respectively, in the presence of counsel and representatives for the Canadian Pacific, the Grand Trunk, and the Canadian National Railway Companies, and the Canadian Manufacturers' Association at the Toronto sittings; counsel for the Canadian Pacific Railway Company only appearing at the hearing in Montreal, the case was adjourned to be reinstated for hearing at the request of the parties; no application for a rehearing having been made on behalf of the Montreal Board of Trade, and the Canadian Manufacturers' Association having withdrawn their application for suspension,—

It is ordered: That the Order of the Board No. 27841, dated November 7, 1918, made herein, be, and it is hereby, rescinded.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28429.

In the matter of the application of the Vancouver, Victoria, and Eastern Railway and Navigation Company, hereinafter called the "applicant company," for authority to remove its present station building at Lincoln to Colebrook and to install a car body at Lincoln to take the place of the station at present at that point.

File No. 29395.

THURSDAY, the 12th day of June, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*A. S. GOODEVE, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That, subject to and upon the condition that the car body proposed to be placed at Lincoln, B.C., be made comfortable and kept clean, the applicant company be, and it is hereby, granted leave to remove the present station building at Lincoln to Colebrook and install a car body to take the place of the station at present at that point.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28436.

In the matter of the application of the Taylor Milling and Elevator Company Limited, Lethbridge, Alta., hereinafter called the "applicant," complaining against the classification of "Dr. Rusk's Chick Food," when shipped in mixed cars of flour and feed.

File No. 19367.89.

THURSDAY, the 12th day of June, 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the application at the sittings of the Board held at Lethbridge, February 24, 1919, in the presense of counsel for the Canadian Pacific Railway Company, the applicant being represented at the hearing, and what was alleged; and upon reading what has been filed in support of the application, and on behalf of the Canadian Freight Association, and the report of the Chief Traffic Officer of the Board; and its appearing that the Canadian Pacific Railway Company, by Item 87A of Supplement No. 20, effective May 6, 1919, to its commodity tariff C.R.C., No. W. 2397, has established its fourth class rates from Lethbridge to all its stations in Alberta, Saskatchewan, and British Columbia, on poultry food, removing in part the objections of the applicant to the classification complained against,—

It is ordered: That the Canadian Pacific Railway Company file forthwith a further supplement to its tariff C.R.C. No. W. 2397, adding to the said Item 87A of Supplement No. 20 the eighth-class rating for carload shipments of not less than 30,000 pounds of the items of poultry food therein enumerated.

And it is further ordered: That the application for the privilege of including less-than-carload lots of poultry food with grain products at the carload rates provided for the latter, bulking the whole to make up the minimum weight required for grain products, be, and it is hereby, refused.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28437.

In the matter of the application of the Grand Trunk Railway Company of Canada, hereinafter called the "applicant company," under section 258 of the Railway Act, for approval of the location and detail plans Nos. J-2 and 5384, dated, respectively, April 29, 1919, and March, 1915, of the passenger shelter to be erected by the applicant company at Jamieson's siding, mileage 222-57, on the 31st district of the applicant company's line of railway, on file with the Board under file No. 14204.

FRIDAY, the 13th day of June, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of the Chief Operating Officer of the Board, and the consent of the township of South Algoma, filed,—

It is ordered: That the location and detail plans Nos. J-2 and 5384, dated, respectively, April 29, 1919, and March, 1915, of the passenger shelter to be erected at Jamieson's siding, in the province of Ontario, at mileage 222.57, on the 31st district of the applicant company's line of railway, on file with the Board under said file No. 14204, be, and they are hereby, approved.

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 266.

In the matter of the Railway Act and amending Act, 7-8 Edward VII, chapter 61, section 4, and the tariffs of telegraph companies.

File No. 10041.90.

TUESDAY, the 17th day of June, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

It is ordered: That, subject to such Order or Orders as the Board may from time to time issue, all telegraph companies within the legislative authority of the Parliament of Canada be, and they are hereby, authorized to charge the telegraph tolls published in their respective tariffs filed with the Board.

H. L. DRAYTON,
Chief Commissioner.

CIRCULAR No. 179.

Files 10247 and 12016. Resuscitation from apparent death from electric shock.

June 23, 1919.

Attention is hereby directed to Circular No. 37, dated May 3, 1909, and Circular No. 119, dated July 29, 1913, issued by the Board relative to specific cases where railway employees were apparently killed by electric shock, and referring to the necessity of public education in regard to the possibility of saving lives by means of artificial respiration and the advisability of having the rules for resuscitation from electric shock universally learned.

These rules have been recently revised by the National Electric Light Association and were issued as a supplement to the *Electrical World* of New York on June 14, 1919.

The Board directs your attention to this recent revision and to the desirability of having these rules circulated broadcast, also requests that it be advised on or before July 15, 1919, as to what action has been taken.

By order of the Board,

A. D. CARTWRIGHT,
Secretary.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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No. 8

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Complaint of the Ontario Paper Company, Ltd., Thorold, Ont., against the rate of 22 cents per 100 pounds charged by the Grand Trunk Railway Company on newsprint paper, c.l., from Thorold, Ont., to Chicago, Ill.

File 24602.4.

JUDGMENT.

Mr. Commissioner McLEAN:

Newsprint paper is shipped by the applicant company from Thorold, Ont., to Chicago, Ill. The rate it pays is 22 cents—that of the sixth-class of the Official Classification, for the point in question. While newsprint paper is rated fifth-class in the Official Classification, by an “exception” it is rated sixth in Eastern and Central Freight Association territories.

In the complaint as launched, it is set out:—

I.

“That the Ontario Paper Company, Limited, is a corporation organized under the laws of the province of Ontario for the manufacture and sale of newsprint paper. Its place of business is located at Thorold, Ont., adjacent to and served by the tracks of the Grand Trunk Railway Company of Canada, all of its freight traffic being handled by the said Grand Trunk Railway Company of Canada.

II.

“That the Grand Trunk Railway Company of Canada by authority of its Freight Tariff C.R.C. No. E-3936, charges and collects from said complainant a toll of twenty-two cents per hundred pounds on newsprint paper, containing not less than 60 per cent ground wood, carloads, minimum weight forty thousand pounds, for its haul from Thorold, Ont., to Chicago, Ill., U.S.A.

III.

“That the said toll of twenty-two cents per hundred pounds is unjustly discriminatory, unreasonably prejudicial, unjust and unreasonable in violation of paragraph 4 of section 315 and paragraph 3-C of section 317 of chapter 37 of the Railway Act, 3 Ed. VII, c. 58, s. 1.

IV.

"That the commodity rate on newsprint paper, carloads, is twenty-two cents per hundred pounds, the same as the sixth-class rate from Thorold, Ont., to Chicago, Ill. (sixth-class being the classification universally applied on shipments of newsprint paper, not covered by specific commodity rates, from points in Canada to points in the United States north of the Ohio river). All other newsprint manufacturing points in either Canada or the United States have specific commodity rates on newsprint traffic to Chicago, Ill., which range from 52.2 per cent to 86.7 per cent of the sixth-class rates. A carload rate of twenty cents per hundred pounds on newsprint paper would be 90.9 per cent of the sixth-class rate applicable from Thorold, Ont., to Chicago, Ill.

V.

"Wherefore complainant prays that the Grand Trunk Railway Company of Canada may be required to answer the charges herein; that after due hearing and investigation an order be made commanding the Grand Trunk Railway Company of Canada to cease and desist from the aforesaid violation of said Act, and establish and put in force and apply in future (subject to the requirements of the Interstate Commerce Commission) a toll not to exceed twenty cents per hundred pounds applying on newsprint paper, carloads, containing not less than 60 per cent ground wood, minimum weight forty thousand pounds, from Thorold, Ont., to Chicago, Ill., via the Grand Trunk Railway System, and that such other and further orders be made as the Board of Railway Commissioners may consider proper in the premises."

Comparisons are made between the 22-cent rate and the blanket rate of 29½ cents applying in the territory from Espanola, Ont., to Millinocket, Maine, a distance of 790 miles. The 29½-cent grouping is not attacked as unreasonable.

The principle of group rates as applicable to a commodity entering into a common market, from different producing points, is well established. It is at the same time recognized that without adherence to a mileage basis the element of distance may be recognized as a factor in arranging two or more groups. The group not being built up on a mileage basis, rates within it are not a necessary criterion of the reasonableness or otherwise of shorter distance rates without it on a mileage basis.

Is the existing rate arrangement as applying to the applicant company one which deprives it of a rate advantage which its mileage should give it? The plant of the applicant company is 512 miles from Chicago. Ottawa, under the 29½-cent blanket, is 265 miles further from Chicago and pays 7½ cents more. Of course this comparison is not a final one, as the Ottawa rate is but one in a grouping embracing longer distances.

If comparisons are made with St. Raymond and Jonquiere, on the Canadian Northern, the respective rate advantages of Thorold over those points are 9½ and 12½ cents.

As bearing on the position of the sixth-class rate as a normal basis, it may be noted that the 29½-cent rate applies from the mills in northern New York, except where the sixth-class rate is lower, e.g., from Fulton the rate is 26½ cents.

The Niagara Falls shippers who are the nearest competitors of the applicant company pay sixth-class rates not only into Chicago but also into the other consuming points in Central Freight Association territory. Their rate to Chicago is also 22 cents.

There is no showing that with its 7½-cent advantage over the 29½-cent group the applicant company is at any disadvantage in getting its product to Chicago and there disposing of it. No evidence was submitted that any rate advantage possessed by any

competitor in the 29½-cent blanket had rendered it more difficult for the applicant company to do business in Chicago. While as a result of grouping as well as of tapering of rates the ton-mile rates for the longer mileages of the 29½-cent group are less than those of the applicant company, the rate per 100 pounds is greater.

The output of the applicant company is taken by the *Chicago Tribune*, of which the applicant company is a subsidiary.

It has not been established (a) that at Thorold the applicant company is charged a rate so disproportionate to mileage as to deprive it of a rate advantage legitimately attaching to its mileage; (b) that the effect of the rate is to afford its competitors in the Chicago market such unjust discrimination or undue preference as to either deprive it of an outlet for its product in that market, or in lesser degree to hamper in any way the disposition of said product.

The complaint should be dismissed.

June 26, 1919.

The Deputy Chief Commissioner and Commissioner Goodeve concurred.

The CHIEF COMMISSIONER: I would dismiss the application.

ORDER No. 28445.

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "applicant company," for authority to remove its regular station agent at Illecillewaet, in the province of Alberta.

File No. 4205.185.

THURSDAY, the 12th day of June, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, and on behalf of the Lanark Mining Company, and the report and recommendation of an Inspector of the Board and its Chief Operating Officer,—

It is ordered: That the applicant company be, and it is hereby, granted leave, pending further order, to remove its regular agent at Illecillewaet station, in the province of Alberta, subject to and upon the condition that an operator be placed at that point, whose duties shall include keeping the station clean and, when necessary, heated and lighted for the accommodation of passengers on the arrival and departure of trains, and caring for less than carload freight and express matter.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28457.

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "applicant company" under section 11, chapter 61 of the Acts 7-8 Edward VII, for approval of by-law No. 91, enacted by the board of directors of the applicant company, dated the 16th day of June, 1919, authorizing the vice-president in charge of traffic, the freight traffic manager, the assistant freight traffic manager of the eastern lines, and the assistant freight traffic manager of the western lines to prepare and issue tariffs of the tolls to be charged for the carriage of freight traffic upon the railways and vessels owned or operated by the applicant company, and any portion thereof; and the passenger traffic manager, in like manner, to prepare and issue tariffs of the tolls to be charged for the carriage of passenger traffic upon the said railways and any portion thereof, and upon the said vessels.

File No. 620.

TUESDAY, the 24th day of June, A.D. 1919.

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—
It is ordered: That the said by-law be, and it is hereby approved.

W. B. NANTEL,
Deputy Chief Commissioner.

ORDER No. 28481.

In the matter of the application of the Grand Trunk Railway Company of Canada, hereinafter called the applicant company, for approval of the proposed changes in its train service between Montreal and Ottawa effective June 29, 1919.

File No. 27563.60.

WEDNESDAY, the 25th day of June, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*A. S. GOODEVE, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the following train service on the line of railway of the applicant company between Montreal and Ottawa be, and it is hereby approved, namely,—

Train No. 47.—Leave Montreal at 8.15 a.m., daily, arrive at Ottawa 11.45 a.m.

Train No. 51.—Leave Montreal 4 p.m., daily except Sunday, arrive at Ottawa 7.30 p.m.

Train No. 53.—Leave Montreal 8.05 p.m., daily, arrive at Ottawa 11.05 p.m.

Train No. 48.—Leave Ottawa 8.30 a.m., daily, arrive at Montreal 12 noon.

Train No. 50.—Leave Ottawa 3.30 p.m., daily, arrive at Montreal 6.30 p.m.

Train No. 52.—Leave Ottawa 6.50 p.m., daily except Sunday, arrive at Montreal 10.20 p.m.

2. That the Order of the Board No. 27190, dated May 7, 1918, made herein, be, and it is hereby, rescinded.

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 267.

In the matter of section 246 of the Railway Act, as amended by chapter 37 of the Acts 7-8 George V, section 4, for the carrying of wires and cables along or across the tracks of railway companies under the jurisdiction of the Board; and the application of the Canadian National Railways for an order amending the Standard Conditions and Specifications for Wire Crossings, approved by the General Order of the Board No. 231, dated May 6, 1918, made therein.

Case No. 4704.1.

FRIDAY, the 27th day of June, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon its being represented to the Board by the Canadian National Railways that the pay of inspectors for inspecting over-crossings and underground lines is fixed by said standard conditions and specifications at three dollars per day, and that the actual cost of such inspections to the railway companies is eleven dollars per day; the Grand Trunk and Canadian Pacific Railway Companies concurring in the above representations,—

It is ordered: That the said standard conditions and specifications for wire crossings, as approved by the General Order of the Board No. 231, dated May 6, 1918, be, and they are hereby, amended by striking out the words “three dollars” after the word “exceed” and before the word “per” in the sixth line of paragraph 4 of part 1 of said conditions and specifications, and substituting therefor the words “eleven dollars”; by adding after the word “applicant” in the sixth line of said paragraph 4 the words “such payment to cover both wages and expenses”; by striking out the figures “\$3” after the word “exceeding” and before the word “per” in the eighth line of paragraph 4 of part 2 of said conditions and specifications, and substituting therefor the figures “\$11”; and by adding, after the word “applicant,” in the eighth line of said paragraph 4, the words “such payment to cover both wages and expenses.”

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28483.

In the matter of the complaints of the township of Etobicoke, the town of Dundas, the township of Wainfleet, and the town of Rockwood, against the proposed cancellation, on July 1, 1919, of district rates by the Bell Telephone Company, effective under their tariffs filed with the Board.

Files Nos. 29407, 29407.1,
29407.2, 29407.3, and 29407.4.

SATURDAY, the 28th day of June, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the complaints, and on behalf of the Bell Telephone Company,—

It is ordered: That the cancellation of district rates, namely:—

Between Weston and Islington-New Toronto.

Between Dundas and Hamilton.

Between Ridgeville-Welland and Marshville, Wellandport and Smithville.

And between Rockwood and Guelph.

As published in schedules filed by the Bell Telephone Company to become effective July 1, 1919, be, and the same are hereby, suspended pending a hearing of the matter on a date to be fixed by the Board.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28495.

In the matter of the application of the Canadian Pacific Railway Company, herein-after called the "applicant company," under section 258 of the Railway Act, for approval of the proposed location of the applicant company's station building at Horizon, in the province of Saskatchewan, as shown on the plan, dated Regina, April 22, 1919, on file with the Board under file No. 25610.

MONDAY, the 30th day of June, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application, and the consent of the rural municipality of Bengough, No. 410, filed; and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the proposed location of the applicant company's station building at Horizon, in the province of Saskatchewan, directed to be constructed by the Order of the Board No. 28176, dated March 20, 1919, as shown on the plan, dated Regina, April 22, 1919, on file with the Board under said file No. 25610, be, and the same is hereby, approved; the station to be constructed in accordance with the applicant company's A-2-Standard plan on file with the Board.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28503.

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "applicant company," for authority to remove its regular station agent at Windy Lake, in the province of Ontario.

File No. 4205.219.

FRIDAY, the 4th day of July, A.D. 1919.

SIR HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the applicant company be, and it is hereby, granted leave, pending further order, to remove its regular station agent at Windy Lake, in the province of Ontario.

H. L. DRAYTON,
Chief Commissioner.

CIRCULAR No. 180.

File 29157. Watchmen at crossings where there are more than four tracks when gates are out of order.

June 30, 1919.

The Board has considered the replies received from the various railways in answer to its letter of March 4 on this subject, and is of the opinion that it will be sufficient for the present if the railway companies will undertake to appoint two watchmen when gates are out of order at a crossing where there are more than four tracks, and when the traffic or other conditions justify the same for the adequate protection of the public.

The Board requests that the railway companies file an undertaking on the lines as set out herein, together with a statement in detail of the crossings involved.

By Order of the Board,

A. D. CARTWRIGHT,
Secretary.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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No. 9

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In the matter of the Application of the Express Traffic Association for Canada for an increase in rates; and in the matter of the application of the cities of Montreal, Toronto, Winnipeg, and other points for increase in delivery areas.

File No. 29040.

JUDGMENT.

THE CHIEF COMMISSIONER:

The matters of express charges, practices, classification, and delivery limits are entailed in these applications. The issues are vital and go to the foundation of the express business, and of necessity have to be treated as a whole.

The territory covered embraces the whole country, and sittings have been held in Ottawa, Toronto, Montreal, Vancouver, Victoria, Nelson, Vernon, Lethbridge, Calgary, Edmonton, Saskatoon, Regina, Winnipeg, Fort William, Sudbury, and Moncton.

On the special application of the Winnipeg Board of Trade leave was reserved to it to add to its submissions at the hearing in writing. The Board of Trade has been delayed in its work by reason of the strike, and its submissions have been received only on the 23rd day of June.

The companies' application for increased rates is based on the grounds of insufficient earnings resulting in the main from a largely increased cost of conducting business.

The application as stated is for an increase of 25 per cent over the present rate per hundred pounds west of Sudbury and of 37 per cent over the present rate per hundred pounds east of Sudbury. Much evidence was given showing that in many instances the companies' demands produced very much greater increases. The companies' proposals provide for increases by additions to its merchandise rate scale and other scales of the classification. In addition to this, however, the companies' proposals involve the cancellation of commodity rates under which traffic has moved in the past.

The effect of this change is far-reaching. Under these commodity rates important staple commodities move, such as fruit, meat, cream, and fish. The companies urge that the cancellation of these commodity rates will eliminate inconsistencies in present tariffs, and result in a more proper and scientific alignment of the rates. While this may well be the case, the actual effect of such a cancellation would be, on the one hand, to give the companies a very large increase in earnings, and on the other hand would disturb existing trade practices of many years' standing.

The appearances have been so many and the evidence so voluminous that I do not now attempt to refer to it in full detail, but it may be said that while some of the boards of trade and shipping organizations thought the increased costs of operation would justify an increase in rates, others, and perhaps the majority, objected to any increase whatever, and all unite in opposition to the companies' proposal as a whole.

Submissions have been made along these lines by the municipalities and boards of trade from Halifax on the east to Victoria on the west. The investigation has shown that express charges and rates have not hitherto been worked out on any scientific basis whatever, and that the rates actually obtaining in one part of the country bear little or no relation to those obtaining in other sections.

The added cost of carrying on business materially affects the question of free delivery limits, particularly at points where long cartage hauls are involved; and the capacity of the companies to make deliveries, as they now stand, or to make deliveries in extended areas as asked, turns upon the question which underlies the application for an increase in rates, namely, the earnings enjoyed by the companies and their financial resources.

As a result, it has been found necessary, notwithstanding the urgent demands of the express companies for immediate relief on the ground of absolute necessity, and notwithstanding the insistent demands of municipalities for increased delivery areas, to make a careful study of the whole situation before any change whatever is authorized.

I deal, in the first instance, with the question of the necessities of the companies and their financial position. The claim has been advanced by some contestants that the companies' profits or deficits relate simply to the method of book-keeping, and that profit on the one hand and loss on the other depend merely upon what payment is made by the express companies to the railroad companies for rail carriage or what is technically called express privilege.

The basis of such contention lies in the fact, speaking generally, that the express companies which operate over the different railway lines in Canada are in effect owned by and are creatures of the railways. The railways, outside of office accommodation and the equipment necessary for the collection and delivery of parcels, supply practically all the facilities necessary for the express people to do business.

While, as a matter of fact, the percentage of gross receipts paid to railway companies by express companies is founded on contract, owing to the relationship which the express company bears to the parent railway company no reliance of necessity can well be placed on these agreements as affording a fair indication of a proper return to the railway company, or a proper expense of the express company. As the parties are not at arm's length and as all earnings ultimately go to the parent railway company, the agreements may be looked upon as a matter of form. While this is so, undoubtedly the railway company is entitled to payment for the transportation and facilities it affords, and the further and additional service given by the express organization ought to have its reasonable recompense.

While, in view of the peculiar situation in Canada, it may, therefore, be that the detail of distribution is not a matter of great moment, the ultimate result of the companies' business taken in gross cannot be said to be a matter of bookkeeping.

As I see it, under all the circumstances, the public has the right to ask that express tolls be considered on the same basis as if service was rendered by the railway company itself. The express business is in fact a railway function, and express companies are peculiar to the North American continent. The mere introduction of the express company ought not to make the service any more expensive to the public than if given by the railway company itself.

At the time of its inception, and for a long period thereafter, the express business was extremely profitable. During the period of low costs and wages the rates of the express companies were, in some instances and districts, higher than they are to-day.

A prolonged investigation was held by the Board, extending over a period of some three years, culminating in the Board's judgment of 1911, under which certain readjustments of the rate basis were ordered, and the standard merchandise mileage basing scales fixed as follows:—

For the territory east of and including Sudbury and Windsor, not to exceed \$3; for the territory west of Sudbury to Crows Nest, Canmore, and Edson, Alta., not to exceed

\$5, and from this territory west not to exceed \$6 per hundred pounds for the 900-1,000-mile group.

These standard rates ought to be the basis from which other rates are calculated, and are in fact the underlying basis of the tariff system.

In view of the earnings in the territory west of Sudbury the Board, by its judgment of April 22, 1913, made a general reduction in tariffs in effect, Sudbury west, of 20 per cent, and the standard maximum mileage merchandise tariffs for this territory were reduced to \$4 and \$4.75, respectively, for the same 900-1,000-mile group.

Besides this action the Board has also reduced express charges on fruit and dairy products. During the whole period of the Board's regulation, reductions in the express rates have been ordered, and no increases granted, with the exception of the charges allowed for returned empties, fixed by the judgment of 1911 at half the rate when full but for the actual weight only.

In view, however, of other provisions of the judgment of 1911, the result of that judgment was rather to reduce than to increase express earnings. The express business has been carried on in Canada for over thirty-five years, and during that period increases in rate basis have not been made.

But as the express business is really a railway function, it is necessary not only to arrive at the result that the express companies need more money, but also to ascertain that the payments to railway companies for express privileges are not unduly high. Unfortunately, in so far as the general situation is concerned, there is no room for the claim that railway earnings at the present are exorbitant. The contrary is the case. Notwithstanding the increases which have been recently allowed and which are substantial, operating costs have steadily increased at a greater rate. The wage scale in particular has been greatly increased. The cost of operation does not appear to be decreasing, but on the other hand the tendency is to increase.

The results for March and April, on the three larger lines, comparing them with the same months of 1918, are as follows:—

CANADIAN PACIFIC RAILWAY COMPANY.

	March, 1918.	March, 1919.
Gross earnings, including outside operations.. . . .	\$12,427,914 92	\$12,374,182 10
Expenses	9,435,133 56	10,835,137 96
Net revenue.. . . .	2,992,781 36	1,539,044 14
	April, 1918.	April, 1919.
Gross earnings, including outside operations.. . . .	\$13,328,848 75	\$13,108,904 96
Expenses.. . . .	9,873,459 35	11,020,280 59
Net revenue.. . . .	3,455,389 40	2,088,624 37

CANADIAN NORTHERN RAILWAY COMPANY.

	March, 1918.	March, 1919.
Gross earnings.. . . .	\$3,436,333 22	\$3,662,721 77
Expenses.. . . .	3,225,895 06	4,444,004 76
Net revenue.. . . .	210,438 16	.....
Deficit.. . . .	.....	781,282 99
	April, 1918.	April, 1919.
Gross earnings.. . . .	\$3,958,082 54	4,064,485 64
Expenses.. . . .	3,416,806 89	4,794,401 12
Net revenue.. . . .	541,275 65	.....
Deficit.. . . .	.....	729,915 48

GRAND TRUNK RAILWAY COMPANY.

	March, 1918.	March, 1919.
Gross earnings.. . . .	\$3,937,462 00	\$5,513,593 00
Expenses.. . . .	3,856,659 26	4,610,254 84
Taxes.. . . .	82,622 76	88,242 00
Net.. . . .	.....	815,096 16
Deficit.. . . .	1,820 02	.....
	April, 1918.	April, 1919.
Gross earnings.. . . .	\$4,602,247 00	\$5,357,537 00
Expenses.. . . .	3,947,678 55	4,673,727 88
Taxes.. . . .	82,487 09	88,242 00
Net.. . . .	572,081 36	595,467 12

It will be observed that the Canadian Pacific and the Canadian Northern suffer from a substantial loss of net revenue, while the Grand Trunk's net revenue is increased. The Grand Trunk's actual fixed charges amount to \$9,398,444.71. To these fixed charges have to be added, however, deficits on American lines, which, while valuable as feeders to the system, show themselves a loss. As against this the final amount is also changed by income from other investments, which become available when received for application on the fixed charges. For practical purposes ten million dollars may be taken as the amount of the Grand Trunk's fixed charges. It will be seen that the net revenue now earned by the system not only gives no return whatever for the shareholders, but falls far short of meeting the company's fixed charges.

The Grand Trunk's total net earnings from all sources, including rentals for the first four months of the year (there being an actual operating loss in the earlier part of the year), only amounted to \$570,351.82. The proportional amount to pay the fixed charges distributed over the year in this period would be \$3,333,333. The position is even graver as regards the system which above all others people are interested in. The public are interested in the solvency of all railways that they require for transportation purposes; but not only are they so interested in the Canadian Northern, but they are also interested as owners. The result of the Canadian Northern's operations for the first four months of the year, shows a deficit of \$2,596,139.62, and the Canadian Northern has fixed charges which are greater than the Grand Trunk's and entail an annual payment of some 19 million dollars.

But it is said that a very large and entirely disproportionate profit is made out of express cars, and the following gross earnings were given of the Canadian Pacific equipment. (These figures may well be taken as illustrative.)

In the year 1916 gross earnings were:—

Passengers car.. . . .	\$11,474 91
Express car.. . . .	9,586 39
Sleeping car.. . . .	5,190 70
Freight car.. . . .	1,022 64

Figures for 1918 were given as follows:—

Passenger car.. . . .	\$16,159 51
Express car.. . . .	13,970 03
Sleeping car.. . . .	6,288 43
Freight car.. . . .	1,157 66

And it was stated that the number of express cars used in 1916 was 315, and in 1918, 326.

It was also said that steel express cars cost \$1,100; steel box cars, \$1,400; passenger cars, \$20,000; and sleeping cars, \$30,000. Based on these figures, the argument was made that while an express car costs less than a box car, it earns twelve times as much revenue, and that while a sleeping car costs twenty-seven times as much as an express car, it nevertheless earns less than one-half what the express car earns.

As the effect of any increase in express rates results either directly or indirectly in an increase in the railway companies' revenues, the conclusion urged was that under these circumstances no increases whatever should be allowed.

The earnings shown are gross, and gross earnings, which in bulk appear very great, may entirely disappear when the net results are considered. The amount of gross income may have but little relation to the net and it is possible that an increased gross may mean an increased net deficit. The movement of express cars is intensive, the mileage run per express car is great, and in order really to appreciate the results to the railway company the net return and approximate expense per mile have to be arrived at. The cost to the railway company is not nearly so much its capital cost in supplying the car as the cost of transportation, which depends entirely upon the mileage necessarily travelled in order to earn the gross.

The cost figure of steel express cars is incorrect. Steel express cars cost, two years ago, approximately \$11,000. The cost returned is approximately only 10 per cent of the actual. The error is obvious to any one having the slightest knowledge of the

business. The amount would more nearly represent only the cost of the necessary trucks and wheels for passenger train equipment.

However, even with this correction, the gross figures given would appear to show large gross express earnings per express car; but the figures themselves are subject to further correction, as a considerable proportion of the express business is not carried in express cars so returned to the department, but in other equipment. For example, refrigerator cars are largely used for express business, but are not classified as express cars. As the gross earnings referred to are arrived at by dividing the gross receipts from the express company by the number of express cars shown in the railway company's returns, the result is one which cannot be relied upon even for gross earnings.

The following statement showing the Canadian Pacific's gross receipts from express revenues, including in gross receipts not only the direct payment for the carriage of so many tons of merchandise, but also other payments which are made by the express company, including rentals and showing also express cars mileage, expenses and pro rata revenue was filed by the Canadian Pacific. The statement is for six months, which is fairer than if it had been for the year, as payment at the advanced railway freight rate only commenced in August.

The statement is as follows:—

Six months ended January 31, 1919.

Express revenue to the railway including messenger fares.. . . .	\$3,150,076 81
Rental.. . . .	210,000 00
	<hr/>
	3,360,076 81
Express car mileage per car mille, 9,077,224.. . . .	37 01
Expense per car mile, allowing for the lower cost of repairs and train supplies and expenses.. . . .	\$30 58
Pro rata proportion of taxes, fixed charges, dividends, and margin of two per cent over dividends on common stock (29.21 per cent).. . .	8 93
Revenue which should be earned for express traffic to provide its due proportion of return on interest and dividends.. . . .	39 51

Mr. Moule, the company's statistician, was called in support of this statement His material evidence is as follows:—

"Q. I understand you have prepared a statement showing the revenue on express cars?—A. Yes. I prepared a statement covering the six months ending January 31, 1919, for the reason that it reflects nearly the whole period the increased revenue accrued to our company on account of the increase in freight rates.

"The expense of operating cars also includes the increased cost of operation due to the application of the McAdoo Award to the railways in Canada.

"Q. That is from the 1st of August?—A. Yes, from the 1st of August to the 31st of January.

"Q. How did you reach your figures?—A. I took the revenue which we derived from the express companies' earnings, what we received from the express companies and credited our Income Account for that six months \$3,150,076.81, and divided the amount by the car mileage, as nearly as I could arrive at it, of cars carrying express, taking a half car as only half a mile per car and a quarter car as only a quarter of a mile per car; and it came to 34.70 per car mile.

"In addition to that the express company pays a rental for accommodation and service at our stations, which, added to the other income, brings up the total revenue on a car mile basis to 37.01 cents. The operating expenses averaged per passenger car mile, as I stated in my evidence in the mail case, to which for convenience I presume reference can be made, 32.10 per car mile.

"If we deduct from that the only deduction which, in my judgment, should be made, an allowance for the lower cost of maintaining cars of this class and something for train supplies and expenses which these cars get a little less of than a passenger train gets, the cost is 30.58 cents. If we add to that what we now pay in taxes, for fixed charges, for dividends on our preferred stock and

common stock, that is to say, the dividends which we pay out of railway income only, not that proportion of the dividend which comes from other sources, and an allowance of 2 per cent on the common stock as a reasonable margin of safety, that adds 8.93 per car mile, making a revenue which in my judgment we should get, judging from the operating expenses of the last six months, 39.51 cents as against, as I just stated, what we are now receiving in revenue as 37.01 cents.

"Q. Are there any special circumstances that go to increase that revenue, at the present time?—A. Yes. At the present time, owing to the movement of troops and the withdrawal of a certain number of express cars from the line to provide commissary cars for the accommodation of troops, the cars have to be overloaded, and that means that all cars are being loaded more than normal, therefore the increased earnings per car mile develop from that.

"I am informed—I cannot give it in evidence, because it is simply information which has reached me but which can doubtless be confirmed by the officers of the express companies—that the result of this overloading is a very heavy increase, in fact, about 115 per cent, in the loss and damage claims during the past six months.

"Q. Is there anything else that goes to increase it; does the lessening of the difference between the freight rates and the express rates affect it?—A. Yes. That is another point. The increase in the freight rates has brought them in many cases very closely up to the express rates. In the express service, in very many places, there is delivery service where there isn't any in freight service; in fact, in the great majority of places. The result is, that for the small difference that now exists in many cases between the freight and the express rate, it is to the advantage of the shipper to ship by express stuff that normally should go by freight, because he saves the expense of cartage at either end. The result of that is that passenger trains are being burdened with the carriage of material which normally should be moved in freight trains.

"Q. Is there anything else in that line; the railway charges passenger rates for messengers?—A. Yes.

"Q. That is the revenue?—A. Yes. Everything is in there that we get from the express company.

"Q. That leaves the revenue, less the expense for the express cars?—A. Yes.

Cross Examined by Mr. Scott:

"Q. What else have you from the express companies that is included in that statement; what about station facilities, are they included?—A. The station facilities, are included in the expense account, because we include also the rental we get. If you want to take out the station facilities, we must take out the revenue we get from that source, the rental we get.

"Q. The company gets a rental of \$100,000 a month for station privileges?—A. No, \$35,000. I don't know of any such amount as that. It is \$35,000 a month.

"Q. What other privileges does the express company get from the railway, which are included in that?—A. The use of their stations, station facilities, heating, lighting.

"Q. What about cleaning the cars?—A. The railway company absorbs that.

"Q. How many express cars have you running now?—A. There is a certain number of cars defined as express cars. I could not recall the figure just at the moment. Somebody—Mr. Payne—had that I think yesterday morning among some other information.

"Q. But the fact is that a certain number of cars are called express cars does not mean the entire number of cars used by express companies?—A. Thousands and millions of miles are made by refrigerator cars and other cars. All the refrigeration is carried in cars which are not included in that list of express cars."

It will be observed that this evidence shows that instead of the Canadian Pacific earning disproportionate revenue out of express, that its whole revenue from the express company amounts to 37.01 cents an express car mile as against an earning of 39.51 cents, which the express business ought to have earned on a pro rata basis with the company's other activities and to produce the results Mr. Moule's statement indicates. The difference of 2.50 cents a mile on the express car mileage shown of 9,079,224 gives a resultant total of \$226,930.60. This sum is then the amount on Mr. Moule's figures, the railway express earnings are rateably short in maintaining earnings on a similar basis to the other company activities.

While in the case of the Canadian Pacific, the Dominion Express pay on general merchandise on the basis of one and one-half times the first-class freight rate, and in view of the freight rate increases, the Canadian Pacific returns show results on the increased basis the contrary is the case of the Grand Trunk, as that company receives 50 per cent of the express company's receipts arising from transportation. As a result its revenues have not been improved by the higher railway freight rate basis now obtaining.

As the old basis is continuing on the Grand Trunk that company filed a statement showing its revenue from handling express on its lines in Canada, the total express car miles and the average express car mile earnings during the years 1917 and 1918. The statement is as follows:—

	1917.	1918.
Revenue.....	\$1,621,179 76	\$1,719,654 40
Express, car miles.....	6,570,984	6,223,525
Revenue, per mile.....	\$24 67	\$27 63

It will be noted in Mr. Moule's evidence, that express moves in full cars, in half cars (the combination baggage and express cars) and in one-third car lots (combination mail, baggage and express cars). The details of such movement may be illustrated by the statement filed by the Grand Trunk for 1917 and 1918:—

1917.	One-third car-mile.	Half car-mile.	One car-mile.	Total.
January.....	28,038	202,759	279,327	510,124
February.....	25,268	153,711	257,600	436,579
March.....	27,032	174,381	330,041	531,454
April.....	28,046	170,399	295,065	493,510
May.....	30,111	182,196	337,099	549,406
June.....	29,051	177,566	408,555	515,172
July.....	28,746	214,004	345,576	588,326
August.....	29,394	214,043	407,092	650,529
September.....	25,814	194,598	412,569	632,981
October.....	27,245	205,246	375,543	608,034
November.....	26,627	196,525	208,638	531,790
December.....	26,410	196,633	300,036	523,079
Total.....	331,782	2,282,061	3,957,141	6,570,984

	One-third car-mile	Half car-mile	One car-mile	Total
1918				
January.....	30,098	176,807	226,810	433,715
February.....	25,650	159,430	238,774	423,854
March.....	27,688	160,011	292,377	480,076
April.....	29,087	163,490	299,663	492,240
May.....	27,942	176,387	344,149	548,478
June.....	26,520	168,541	294,008	489,069
July.....	27,983	182,595	345,825	556,413
August.....	28,212	183,293	359,383	570,888
September.....	23,935	179,790	394,779	598,504
October.....	28,040	184,519	362,188	574,747
November.....	26,980	175,968	323,903	526,851
December.....	26,411	172,223	330,056	528,690
Total.....	328,546	2,083,054	3,811,925	6,223,525

For the purpose of arriving at a total of the net car miles the actual one-third car-mileage is divided by three and the actual one-half car-mileage divided by two, the solid express car-mileage being, of course, treated as a unit. For example, taking the last line in the above statement, which shows the movement for December, 1918, the gross mileage covered by cars which are one-third express was 79,233. This was reduced, as shown in the statement, by dividing by three to arrive at the net movement. The gross mileage of the cars which are devoted one-half to express work was 344,446, which in order to arrive at the net mileage, was divided by two. This probably is as fair a method as can be devised for arriving at the costs of express transportation. Practically all railway cost calculations have to be based somewhat on arbitraries and somewhat on percentages.

While the resultant expense per car-mile shown by Mr. Moule appears high it undoubtedly is but too true that the costs of railway operation have very rapidly increased. The experience of the eastern lines of the Canadian Government system well shows this. The return made by that system and without any regard whatever to the exigencies of this case, but made nevertheless in connection with a consideration of their passenger rates, well illustrates this condition. The return which covers cost of passenger train operation per mile is as follows:—

Month.	1914.	1915.	1916.	1917.	1918.
	\$ cts.	\$ cts.	\$ cts.	\$ cts.	\$ cts.
January.....	1 40	1 34	1 18	1 64	2 18
February.....	1 62	1 42	1 22	1 81	2 35
March.....	1 70	1 26	1 31	1 87	2 71
April.....	1 16	1 26	1 23	1 58	1 94
May.....	1 23	1 38	1 34	1 73	2 31
June.....	1 40	1 45	1 43	1 62	2 23
July.....	1 31	1 29	1 41	1 94	2 41
August.....	1 25	1 23	1 49	1 91	2 29
September.....	1 18	1 36	1 49	2 10	3 07
October.....	1 31	1 26	1 49	2 17	
November.....	1 26	1 30	1 44	2 16	
December.....	1 24	1 10	1 56	1 90	
Total.....	1 33	1 30	1 39	1 87	2 39

It will be noted that this return was only carried down to last September at which time the full effect of the McAdoo Award had not been entirely felt.

Passenger train mile costs were shown by the Grand Trunk Company as follows:—

January, 1916..	\$1 34
January, 1917..	1 62
January, 1918..	2 75
February, 1918..	2 64
March, 1918..	2 26
April, 1918..	2 28
May, 1918..	2 12
June, 1918..	2 40
September, 1918..	2 65

The returns that have been made by other railway companies cannot be looked upon as characteristic, as the shorter systems of necessity do not enjoy anything like the same mileage, and costs are of necessity higher. For example, the figures of the Toronto, Hamilton and Buffalo Railway Company compiled in March, 1918, show a cost per passenger car mile of 66.42 cents. Doubts can be cast and exceptions taken to almost any cost and calculation, but the cost of railway operating expense has undoubtedly so much increased that the old methods of an arbitrary division between the express companies and the railway companies do not give a fair return to the railroad companies. The Grand Trunk's figures justify a cost of 30.57 cents for an express car-mile. This is some 2 cents lower than the cost per passenger car-mile, the reduction being made on account of the smaller amount of upkeep service and attention by train crews required. The Canadian Pacific figures are 30.58 cents. The figures in the Government system would justify a very much larger amount. In order to make a proper return to the railway companies the actual cost per mile should represent an operating factor of 75 per cent, which would represent a payment to the railway company equal to 40 cents per car-mile. The average number of cars per passenger train, as worked out by the comptroller of statistics, is 5.7. Applying this percentage to the Canadian Government system, the costs for the abnormal month of September, would amount to 54 cents per passenger car. Taking this cost less the reduction of 2 cents in the case of the express car in order to create a proper return to the system, an express car ought to earn 69 cents a car-mile. Taking the normal month of August when the train-mile cost amounted to \$2.29, on the same basis cost of operation was 40 cents a passenger car-mile, and again making an arbitrary reduction of 2 cents in case of the express car movement, an earning of 50 cents a car-mile ought to be obtained. I would not give effect to any of these higher costs even for the purposes of consideration, but if a gross return of 40 cents per car-mile is taken as a fair and reasonable basis of remuneration to the Railway Systems generally, it will be seen that the present basis of railway return is inadequate. The Grand Trunk gave a service of 6,570,984 express car miles for 1917. For this service it received a revenue of \$1,621,179.76. Had it been paid on a basis of 40 cents per car mile its revenue would have been \$2,628,393.60, and if the express company were so paying the Grand Trunk, its loss for the year 1917 of \$38,650 would have been increased to \$1,045,863.84. The difference, of course, is not so great in the case of the Dominion Express and the Canadian Pacific; but taking the six months ending January 31, 1919, when the increased freight rates were in effect and when, therefore, the difference would be the least, the Canadian Pacific hauled the express cars of the Dominion Express 9,077,224 miles. At the rate of 40 cents a car-mile, the remuneration for this service would have been \$3,630,889.60. Instead of that the remuneration of the Canadian Pacific, including rentals and everything, amounted to \$3,360,076.81. The result would be to add the sum of \$270,812.79 to the large deficiency already existing of the Dominion Express.

It will be noted that the train-mile cost returned by the several companies differ and this is to be expected as these costs must depend on the characteristic train haul which invariably differs on each system, the cost per car is again affected by the average number of cars per train. All returns, however, indicate a very greatly increased cost of operation. The Canadian Pacific costs per train are the lower, and

(subject to the very debatable question as to whether it is possible to arrive at unit cost with absolute accuracy in railway service) are arrived at on a basis which appears to be as fair as any that has yet been adopted. Many costs are indirect; many costs can only be prorated and there is always room for argument as to the basis of the prorate. The method of subdivision adopted in the Canadian Pacific calculation is in summary form as follows:—

Actual cost.—Train enginemen, fuel for train locomotives, trainmen's wages, and great bulk of train supplies and wages.

Yard expenses.—Statements from heads of different divisions as to the different proportions.

Maintenance of way and structures.—Divided on basis of expenses.

Locomotive repairs and renewals.—Divided on straight locomotive basis (this is in accordance with general practice—also made study of typical passenger and freight engines, and found locomotive cost per mile practically identical).

Maintenance of equipment.—(This is a general heading.) Under this heading there are here concerned items of—Superintendence, shop machinery, and other items under that heading. Apportioned on the basis that the previously divided expenses under maintenance bore to the total—what is commonly known as overhead basis.

Traffic expenses.—Worked out on a test for one month by him, giving 57·77 per cent passenger.

Dispatching trains.—Divided on a train-mile basis.

Items under transportation.—Superintendence and station employees, station supplies and expenses, miscellaneous accounts, e.g., drawbridge operation, telegraph and telephone operation, operating floating equipment, other expenses operating joint tracks and facilities, damage to property, damage to livestock on right of way, injuries to persons.

Above apportioned on the basis which the previously divided expenses for passenger bore to the total expenses of those accounts. This the L.C.C. basis.

General expenses.—Apportioned on the basis of how the other accounts were divided between passenger and freight as an overhead of supervisory expense under all previous items.

On the whole I know of no fairer methods of subdivision than the above, but would hesitate at the present time to adopt to the full extent any method of cost subdivision. In particular I am not at the moment prepared to adopt the subdivision of traffic expenses and the cost of dispatching trains. Although worked out on an actual test for one month, an allocation of 57·77 per cent of traffic expenses to those of the passenger service appears unduly high. The month would not appear to be characteristic. Then I do not think that the subdivision of dispatching expenses on the train-mile basis, although on its face just, is correct, owing to the fact that passenger trains run on time-table schedules giving them right of way, and in general only call for the services of the dispatches when they are more than twenty minutes late. On the whole, in order to be safe, I would take 10 per cent off Mr. Moule's figures.

As an indication of what the express business was and how earnings have fallen off, comparison may be made between the first returns made to the department, and which are for the year 1911, and the returns for 1918, made by the Canadian and the Dominion Express companies. The returns show:—

CANADIAN EXPRESS CO.

	Gross Receipts from Operation.	Net Operating Income.	Operating Ratio.
	\$ cts.	\$ cts.	
1911.....	2,689,697 92	288,137 87	88·29
1918.....	5,324,168 03	53,828 30	98·61

DOMINION EXPRESS CO.

	Gross Receipts from Operation.	Net Operating Income.	Operating Ratio.
	\$ cts.	\$ cts.	
1911.....	5,556,338 06	674,237 52	87·86
1918.....	10,505,302 52	711 58	99·99

It will be noted that with an increase in its gross receipts from operation of \$2,634,471, approximating 98 per cent, the net income of the Canadian Express Company is nevertheless decreased by the sum of \$234,309, an approximate decrease of 81 per cent. The very substantial earnings of the Dominion Express Company, in the face of an increase in its gross, no less than \$4,948,964, approximating 88 per cent, disappears practically altogether.

While in the item of express privileges the expenses of the Dominion Express Company have increased without resultant loss to the owner, viz., the Canadian Pacific Railway Company, because, under the existing contract, the payment to the railway company is based on the standard railway freight rate, which has been substantially increased; on the other hand, the net income given, shrunk as it is to the nominal sum of \$711.58, includes the net revenue received from outside operations, amounting to \$68,584, and also the earnings from the money order business, which has continued profitable. The earnings from the money order department have been included in each instance.

Since these statements of 1918 the monthly results of the companies continue to show an unsatisfactory condition. For the Dominion Express Company they are as follows: (Where net earnings are underlined read as deficit.)

TRANSPORTATION BRANCH.

	July		Increase.	Decrease.
	1918.	1917.		
Total earnings.....	\$ 904,480 76	\$855,319 02	\$ 49,161 74	
Total expenses.....	1,043,473 60	829,069 26	214,404 34	
Net earnings	<u>138,992 84</u>	26,249 76	.....	\$165,242 60

MONEY ORDER DEPARTMENT.

Earnings.....	\$22,529 53	\$21,242 53	\$1,287 00	
Net earnings.....	10,631 89	10,789 61	.....	157 72

TRANSPORTATION BRANCH.

	August		Increase.	Decrease.
	1918.	1917.		
Total earnings.....	\$1,062,588 10	\$913,400 16	\$149,187 94	
Total expenses.....	1,109,379 22	891,697 39	217,681 83	
Net earnings.....	<u>46,791 12</u>	21,702 77	.....	\$68,493 89

MONEY ORDER DEPARTMENT.

Earnings.....	\$23,509 35	\$22,749 19	760 16	
Net earnings.....	8,969 28	10,594 94	.....	625 66

TRANSPORTATION BRANCH.

September

	1918.	1917.	Increase.	Decrease.
Total earnings..	\$ 851,736 24	\$893,436 41	.....	\$ 41,700 17
Total expenses..	1,103,670 00	872,206 18	\$231,463 82	
Net earnings..	<u>251,933 76</u>	21,230 23	.....	273,163 99

MONEY ORDER DEPARTMENT.

Earnings..	\$20,287 85	\$25,451 02	.....	\$5,163 17
Net earnings..	8,469 07	12,790 71	.....	4,321 64

TRANSPORTATION BRANCH.

October

	1918.	1917.	Increase.	Decrease.
Total earnings..	\$ 940,778 42	\$926,629 50	\$ 14,148 92	
Total expenses..	1,057,540 24	856,053 83	200,486 41	
Net earnings..	<u>116,761 82</u>	70,575 67	.....	\$186,337 49

MONEY ORDER DEPARTMENT.

Earnings..	\$23,504 69	\$28,098 43	.....	\$4,692 74
Net earnings..	7,542 60	17,305 73	.....	9,763 13

TRANSPORTATION BRANCH.

November

	1918.	1917.	Increase.	Decrease.
Total earnings..	\$ 915,758 07	\$906,893 34	\$ 8,864 73	
Total expenses..	1,060,548 71	844,841 74	215,706 97	
Net earnings..	<u>144,790 64</u>	62,051 60	.....	\$206,842 24

MONEY ORDER DEPARTMENT.

Earnings..	\$26,883 32	\$22,853 34	\$4,029 98	
Net earnings..	13,313 43	13,945 73	.....	632 30

TRANSPORTATION BRANCH.

December

	1918.	1917.	Increase.	Decrease.
Total earnings..	\$ 953,798 70	\$854,446 01	\$ 99,352 60	
Total expenses..	1,098,295 39	852,793 82	245,501 57	
Net earnings..	<u>144,496 69</u>	1,652 19	.....	\$146,148 88

MONEY ORDER DEPARTMENT.

Earnings..	\$26,576 74	\$22,506 07	\$4,070 67	
Net earnings..	14,518 70	7,070 82	7,447 88	

TRANSPORTATION BRANCH.

January

	1919.	1918.	Increase.	Decrease.
Total earnings..	\$ 816,399 41	\$835,053 42	.....	\$ 8,654 01
Total expenses..	1,081,317 27	864,683 17	216,634 10	
Net earnings..	<u>264,917 86</u>	39,629 75	.....	225,288 11

MONEY ORDER DEPARTMENT.

Earnings..	20,266 71	\$18,396 67	\$1,870 04	
Net earnings..	7,658 69	6,558 41	1,100 28	

TRANSPORTATION BRANCH.

February

	1919.	1918.	Increase.	Decrease.
Total earnings..	\$760,701 27	\$706,037 81	\$ 54,663 46	
Total expenses..	978,485 01	756,661 50	221,823 51	
Net earnings..	<u>217,783 74</u>	50,623 69	.....	\$167,160 05

MONEY ORDER DEPARTMENT.

Earnings..	\$20,717 81	\$19,134 59	\$1,583 22	
Net earnings..	13,211 47	11,913 51	1,297 96	

TRANSPORTATION BRANCH.

	March			
	1919.	1918.	Increase.	Decrease.
Total earnings	\$751,918 69	\$864,498 97	.....	\$112,580 28
Total expenses	950,972 75	764,574 54	\$186,398 21	
Net earnings	<u>199,054 06</u>	<u>99,924 43</u>	.....	298,978 49

MONEY ORDER DEPARTMENT.

Earnings	\$21,061 60	\$20,306 72	\$754 88	
Net earnings	8,393 12	8,282 11	111 01	

TRANSPORTATION BRANCH.

	April			
	1919.	1918.	Increase.	Decrease.
Total earnings	\$ 993,218 15	\$992,274 75	\$ 943 40	
Total expenses	1,006,054 96	927,698 00	78,356 96	
Net earnings	<u>12,836 81</u>	<u>64,576 75</u>	.....	\$77,413 56

MONEY ORDER DEPARTMENT.

Earnings	\$22,469 85	\$24,473 74	.....	\$2,003 89
Net earnings	9,420 79	11,431 83	.....	2,011 04

TRANSPORTATION BRANCH.

	May			
	1919.	1918.	Increase.	Decrease.
Total earnings	\$1,217,854 63	\$875,670 39	\$342,184 24	
Total expenses	1,169,401 46	937,182 09	232,219 37	
Net earnings	<u>48,453 17</u>	<u>61,511 70</u>	109,964 87	

MONEY ORDER DEPARTMENT.

Earnings	\$34,071 62	\$23,763 29	\$10,308 33	
Net earnings	20,868 26	13,207 75	7,660 51	

The results show a further declension in net earnings for the period July 1, 1918, to May 31, 1919, as compared with the same months of the year preceding. While the increase in gross amounts to \$555,572.66, the result of the company's operations is to wipe out an earning of \$216,198.28, and to create a deficit of \$1,460,896.01, resulting in a drop in net earnings of \$1,677,094.27.

The express companies all insist that as a matter of common fairness those using its money order department, and who may not be shippers of express freight, ought not to be called upon to make good deficits resulting from transportation, while certain of the contestants urge that the activities of the companies ought to be considered as a whole, and the earnings of the money order department considered in settling express rates. But the net earnings of the money order department amount only to \$117,584.63 for the whole period now considered, so that the result is, on the company's operations as a whole, a deficit of \$1,343,347.38.

On the other hand, the effect of the increases in the standard freight rates of the parent company, the Canadian Pacific Railway Company, is rendered very clear by the figures above set out. While the total transportation business of the Dominion Express Company increases but \$555,572.66 it nevertheless paid an increase to the Canadian Pacific Railway Company for transportation of \$1,299,259.10.

Had the railway company's standard freight rates not been increased and the payments by the express company made on the old basis, only \$4,352,470 would have been paid to the railway company, as against \$5,427,399. In other words, the increased cost for the transportation and facilities afforded by the Canadian Pacific Railway Company would have amounted to only \$224,331 as against the increase of \$1,299,259 as shown. The total increased expenses would be reduced from the increase of \$2,232,666 to an increase of \$1,157,738, and the deficit in the company's transportation operations would be reduced from \$1,460,896 to \$385,968. A basic change in cost such as that indicated, and resulting from contracts between the railway company and its subsidiary, of itself may mean nothing. It is here only significant owing to the fact that the increased cost of operation which required the drastic increase in freight rates is

also common to the operation of passenger trains. On the old basis of freight rates the results of the Canadian Pacific contract did not differ materially from those obtained on the basis of an equal division of gross transportation receipts between the express and railway companies. With much increased freight rates and stationary express rates the difference has become very marked.

Without going into monthly detail, operations* of the Canadian Express Company to the end of April (which are the latest figures available in the case of this company) give the following results:—

CANADIAN EXPRESS COMPANY.

	July 1918 to April, 1919.	July, 1917 to April 1918.	Increase.	Decrease.
Gross receipts.. . . .	\$4,567,160 02	\$4,419,138 23	\$148,021 79	
Total expenses	4,655,765 73	4,386,218 38	269,547 35	
Total net income.. . . .	88,605 71	32,919 85	.....	\$121,525 56

All the activities of the company are included in this consolidated statement, the full receipts for the profits of the money order business being included.

It will be observed that, with a gross income increased by the sum of \$148,021, the former profits of \$32,932.85 become a deficit of \$88,605.71. In other words, in this period a change for the worse in the net figure of \$121,526 has resulted. On each dollar of turnover the company carried on its operations at a loss of 1.94 cents.

Treating the figures of the Dominion Express Company in the same manner, and only applying in the expense columns the former rate of remuneration to the Canadian Pacific, deducting the net earned by the money order department of \$117,548 from the transportation deficit and adding the gross receipts of the money order department to the transportation gross, the resultant deficit of the Dominion Express Company becomes \$268,420, and on each dollar's worth of business the company lost 2.56 cents.

While, as I see it, in Canada the issue that the public are interested in is the reasonableness of the whole rate, bound up with that question the remuneration for the 'strictly railroad service' is undoubtedly a factor of direct importance in arriving at the whole.

Owing to the fact that both the Dominion and the Canadian Northern Express Companies, not only now but at the time the contracts were entered into, were owned and controlled by the same interests as those controlling the Canadian Pacific and Canadian Northern Railway Companies, and were but offshoots of the railway system, it was perfectly easy for those interested, without loss, to provide for an abnormal railway profit on the one hand, or an abnormal express profit on the other, by simply in the one case giving the railway company more and in the other case less for the rail service.

The situation was not the same in connection with the Canadian Express Company. At the present time all the capital stock of this company is owned by the Grand Trunk. The Grand Trunk receives the net profits, or pays the net losses, as the case may be. It is to-day, therefore, as immaterial to the Grand Trunk whether its earnings from the express business are larger qua railway company or qua express company, to just as great an extent as in the case of the other two railway companies.

At the time, however, the original basic contract was made with the old Vickers Express Company, which subsequently became the Canadian Express Company, there was the outside interest—the express company was independent.

A case where the contracting parties are at arm's length may well afford evidence of a proper basis. The contract here calls for a division of the transportation revenue on the 50-50 basis.

The matter has been dealt with in the United States by the Honourable Mr. McAdoo, when director of railways. Practically all of the different express companies there have been organized into what is now known as the American Railway Express Company. This company operates under a contract with the director general. The interests of the Government, as well as of the director general, are not identified with the interests of the American Railway Express Company—the parties were at arm's length. The basis of remuneration there fixed is the payment by the express company

of 50-25 of the express company's gross transportation revenues. On this basis, that is, 50-25, the operations of the American Railway Express Company for the six months commencing with July, 1918, show, at the end of December, a gross revenue from transportation of \$128,128,620.71. The working deficit of this six months' period alone amounts to \$9,870,316.17. The December statement is the last statement that has been filed, but the *Traffic World* reports, from its Washington Bureau, that as of the end of June 30 the deficit will approximately be \$14,540,000.

The American Railway Express Company itself, in view of increased wages, estimates the deficit for the first four months of 1919 to be ten million dollars. Whatever the exact figures are, there is no room for doubt but that the operating conditions, which have proved to work so much to the detriment of express companies in Canada, are to be found in the United States, and that these common conditions produce certain results.

The business is not being carried on profitably, but is being carried on at a loss. Again, it cannot be said that the losses of the American Railway Express Company are attributable to too great railroad earnings in view of deficits in railroad earnings, which are particularly noticeable in United States territory.

The real question is what is the whole charge the traffic must carry in order to be properly self sustaining? What the railroad service is worth, and what amount ought to be fairly added for the additional service represented by express service?

It is felt by some shippers that some attempt ought to be made to get away from the old arbitrary two and one-half to three times the first class freight rate, which was the old basis of the express rate. For example, the Winnipeg Board of Trade in its submissions says:—

“The question then resolves itself into what is a fair return to the express company for the service it renders to the public. Its activities must be divided, on analysis, into two parts—the movement of goods on trains, and the collection and delivery service. The latter would include the work of handling traffic through offices and the incidental book-keeping and clerical work. . . .

“If the Board should see fit to fix a basis of rates covering the rail haul of the traffic, and deal with the collection and delivery service separately, it would, in our opinion, render a distinct service to the shipping public of Canada. The question of percentages for railway companies, of particular problems in collection or delivery and of capital investment, could then be considered on their merits as individual items. Under the present system the issue becomes so involved that no shipper can tell whether he is receiving value for the service he obtains from the express companies. . . .

“If the companies are able to increase rates every time they have a deficit, or a series of deficits, they can afford to be indifferent regarding costs, and inferentially to look with unconcern on the character of their service. Counsel for the Express Traffic Association maintains that a fixed percentage of the total revenues should be apportioned as profits. Mr. Burr, for the Dominion Express Company, fixes 6 per cent as the ratio to be used in this connection. Acceptance of this principle would encourage the companies to believe that their profits are a first consideration. We maintain that the first consideration should be the provision of an adequate and efficient service for the public; and that if a profit must be allowed, in addition to the profit made by the railway company on the rail haul, this should be reckoned on the basis of the capital invested in express equipment and property. To grant a net profit of 6 per cent on “turnover” would, in our opinion, be tantamount to putting the cart before the horse. . . .

The reference made by the Winnipeg Board of Trade to the 6 per cent turnover is to the statement made at Winnipeg, on behalf of the express companies, to the effect that rates should be so adjusted as to leave with the express companies, after making all payments to the railways and paying all expenses, clear profit on their transporta-

tion facilities of six per cent, not on their capital, but on the assumption that their business is more or less kindred to an agency, on their turnover. I would not adopt this basis. The more logical and proper course is to arrive, first, at the proper allowance for the railway service and then to add a fair remuneration for the express service.

The old practice of multiplying the existing first-class standard freight rates is not sound. Under it, the express rate on the shorter movements was approximately three times the freight rate, and on the longer movements two and a half times. While one-half the express rates on a basis of three times the freight rates to-day may constitute a fair remuneration to the railway company, as I see it, the express companies with largely nominal capitals are not entitled to the same return. The Canadian Pacific results show a cost of 30.58 cents per car-mile. While an operating ratio of 75 per cent cannot by any stretch of imagination result in an unreasonable balance out of which to pay taxes and capital charges, I would not, with the information before the Board, fix a rate of 40 cents per express car-mile as reasonable. As already stated, cost calculations are largely matters of averages and to some extent arbitrary assumptions. While the Canadian Pacific figures would support a railway charge of forty cents a mile, and the figures of other systems a much larger rate, in my opinion, for the reasons already stated, they ought not to be adopted to their full extent and full effect given to them.

I would rather adopt the actual results, and these submitted under the circumstances of this case by the line with a lower cost—the Canadian Pacific—show that it receives, on the basis of actual express car miles, 37.01 cents, but this return includes rentals for station accommodation, etc. It does, however, receive on the basis of one and a half times the increased freight rates 34.70 cents an express car mile for the transportation service. In the light of the cost figures, not only of the privately owned but also of the Government systems, this return is reasonable. In considering the express rate I would therefore adopt as the basis for rail service one and half times the freight rate. To this a sum must be added to cover the express companies' service. The work of the express companies consists of billing and shipments, loading them, accompanying the transportation movement by messengers, unloading at point of destination, and making sure of delivery to the proper consignee. It also includes at points where collection and delivery services are established, that service. Over and above this it also includes in all instances the necessary clerical work and auditing, as well as liability for loss and damage claims. A careful study of the expense accounts of the express companies, and by working out in actual test, warrants a charge of 60 cents per 100 pounds to cover express companies work. The actual results can, however, only be found by working them out in actual operation. My view is that the allowance ought to cover the express companies cost of operation, and return a small but reasonable profit on their activities. Theoretically, as the cost of train messengers increases with mileage, the allowance for messengers might be increased with the longer distances; the result, however, would be to unduly complicate an already complicated matter and would not in any event amount to much one way or the other.

If the underlying basis of express charges was at all uniform and mileage tables similar, it would have been very simple to provide for a present emergency by a general percentage increase without disturbing the general rate structure. Unfortunately, the contrary is the case, and such action would merely accentuate and increase the present inequalities.

The inequalities in mileage tariffs are marked. In eastern territory the distances increase every 25 miles up to 100 miles; from 100 to 200 miles increase each 50 miles; and from 200 miles increase every hundred miles. In Prairie territory the 25-mile block is the rule only to 75 miles; from 75 miles the next block is 35 miles and the next two are 50 miles each; beyond 210 they spread 60 miles to 330 miles; then follows one block of 70 miles and four blocks of 75 miles; and the uniform spread of 100 miles is reached only from 700 miles on.

In British Columbia the initial movement is 20 miles, and the first two spreads are 15 miles. From mileage 50 up to mileage 150 the spreads are 25 miles each; over mileage 150 to 350 the spreads are 40 miles each; from mileage 350 to 400 is one block of 50 miles; and from mileage 400 on the spread is uniform and 100 miles per block.

These mileage tariffs result in a different structure apart altogether from the underlying differences in basic rates, and but accentuate differences of treatment in different territories. No justification seems to be apparent. In my opinion the mileage blocks should be similar in all districts. Serious local rate discrepancies also appear; for example:—

Toronto to Montreal, with a mileage of 334, takes a rate of \$1.00, while the rate from Windsor to Belleville for 340 miles is \$1.50, although normally both movements would occur in the 301-400 mile group.

The rate from Montreal, Que., to Rutherglen, Ont., 333 miles, is \$1.50, while the rate from Montreal to Hamilton, 374 miles, is \$1.40.

The rate from Toronto to London, 115 miles, is 75 cents, while the rate from Toronto to Belleville, 113 miles, is 90 cents.

The rate from Toronto to Hamilton, 40 miles, is 40 cents, but from Toronto to Darlington, for 39 miles, the rate is 50 cents.

Other inequalities and discriminations can easily be established. As a result, the easy short cut of a percentage increase must be abandoned, and an attempt made by putting the rate basis of express companies on a more just and uniform principle.

The underlying basis of express rates is the standard maximum, so-called "merchandise" rate. All other rates ought to be predicated on this standard. In the case of commodities which ought to enjoy a special rate, the rate should be calculated at an appropriate fraction of the standard rate, although, of course, the exact rate found by such calculation would be shown.

The rate for bulky articles taking a higher classification are arrived at by the addition of the appropriate fractions over the merchandise rate.

This has not consistently been the practice in the past; apart from the scales of the classification the commodity rates have not been related to any common basis. In order to arrive at any proper express rate structure and enable proper consideration to be given to the reasons for rates as such, the common yardstick of the merchandise rate should be used.

For express rate making purposes Canada is at present divided into four districts, as follows:—

A.—East of the Detroit and St. Clair Rivers, Georgian Bay and Sudbury (inclusive), and east of and including Parent, Que., on the line of the Canadian National, (excluding the line of the Temiskaming and Northern Ontario).

B.—West of and including Sudbury and Parent to and including Sault Ste. Marie, Ont., Crows Nest, B.C., Canmore and Edson, Alta.; also north of and including North Bay.

C.—West of and including Crows Nest, Canmore and Edson, to the Pacific Coast, and to Vancouver Island transfer points.

D.—Vancouver island.

The companies now propose to leave district A as it is.

No change is made in district B, excepting the section north of North Bay.

Points on the Temiskaming and Northern Ontario Railway are at present treated as being in district B, not only for movements from points on that railway to points in district B (which would follow the ordinary rule), but also for local movements on the railway. On the other hand, for movements to and from district "A" the rates are now calculated on the A scale with an arbitrary addition of 25 cents to each rate. It is now proposed to treat points on the Temiskaming and Northern Ontario as points within district B for all movements.

There would seem to be no reason why, as in the past, there should be one rate basis from Cochrane and another rate basis from Sault Ste. Marie. The inconsistency is all the more marked in view of the fact that since the National Transcontinental line was taken over by the Government, and on the endorsement of its management, B territory has been continued on the line of that railway as far east as Parent a point 323 miles east of its junction with the Temiskaming and Northern Ontario at Cochrane.

It may be noted that the location of the Temiskaming and Northern Ontario is not dissimilar geographically to that of the Algoma Central, which is also in B district. The new arrangement is simpler and removes distinctions and differences.

The only change made in district C is to add to that district Vancouver Island. The Vancouver Island tariff has been on a somewhat lower basis than the tariff on the mainland. I have been unable to find any real justification for this, or why the shipper on the Island should be able to pay less than the shipper on the mainland in similar adjacent territory. On its face it would seem to be only equitable that both should pay the same rate, apart from some controlling operating economy or traffic conditions which would justify different treatment. Neither appreciably exists. The lower basis is somewhat more apparent than real, owing to differences in the mileage scales already referred to. No difference whatever exists in railway freight rates, and in my opinion both the Island and the mainland should be put upon the same basis. The territory is really common and the movements are really very similar.

It is difficult to arrive at a proper basis for express charges. There are some questions, however, which must be accepted, and they are, first, that the express business, moving as it does on fast passenger trains accompanied by messengers and, in many instances, also with a collection and delivery service, ought to be materially higher than the standard first class freight rate; and that the rates should be expressed in such a manner that they will be understood by everybody, and that under similar circumstances and conditions they should bear equally and as fairly as possible on all shippers.

One of the probable causes for the loss of net revenue by the express companies, for their increased gross, and for congestion of business and increased damage claims lies in the fact that with the increase of freight rates without a corresponding increase in express rates all proper relationship has disappeared. For example: the late Chief Commissioner, Mr. Justice Mabee, in his exhaustive judgment, refers to the fact that when the Dominion Express Company made their first tariffs they took as their express rates two and one-half times the maximum first-class freight rate between the same points. "In other words, if the maximum first-class freight rate was \$1, the ordinary express rate would be \$2.50, and from that standard the special rate, if any, would be arrived at."

The situation to-day is very different. A large amount of express business originates in Toronto, and the following table gives a comparison of the minimum charge by freight with the present charge by express for the same weight of general "merchandise," for a 50-pound parcel, which would be a fairly large express package, between Toronto and the points named:—

From Toronto to	Rates per 100 lbs.		Minimum freight rate	Add two cartages freight.	Freight total.	Express for 50 lb.	Express per cent. under freight.
	Freight.	Express.					
	cts.	cts.	cts.	cts.	cts.	cts.	
Hamilton.....	29	40	50	50	100	40	60.00
St. Catharines.....	37½	50	50	50	100	45	55.00
Guelph.....	32	50	50	50	100	45	55.00
London.....	46½	75	50	50	100	60	40.00
Charham.....	54½	100	55	50	105	80	23.81
Windsor.....	54½	125	55	50	105	100	4.76
Kingston.....	52	100	52	50	102	80	21.57
Ottawa.....	60½	100	61	50	111	80	27.93
Montreal.....	66½	100	67	50	117	80	31.62

While 50 pounds is, as stated, fairly large for the average express parcel, the maximum that can be forwarded for the minimum freight rate is, of course, much heavier. Freight rates carry no collection or delivery service; the express rates carry them in each instance.

The above table, taken as it is on a basis of 50-pound parcels, more truly represents the problem from the standpoint of the express company; but as it may be said that in order to make the most extreme comparison and on the basis most unfavourable to this application, the express rate should be calculated on the maximum weight which the railway will take for its minimum freight rate, the following table covers shipments of that maximum weight, calculated on the present express charges:—

From Toronto to	Rates per 100 lbs.		Min'm. freight rate.	Max'm. weight or freight rate.	Add two cartages	Freight total.	Express for same Weight.	Express per cent under Freight.
	Freight.	Express						
Hamilton.....	29	40	50	172	50	100	69	31·00
St. Catharines.....	37½	60	50	134	50	100	67	33·00
Guelph.....	32	50	50	156	50	100	78	22·00
London.....	46½	75	50	108	50	100	81	19·00
Chatham.....	54½	100	55	100	50	105	100	4·76
Windsor.....	54½	125	55	100	50	105	125	19·05
								(over.)
Kingston.....	52	100	52	100	50	102	100	1·96
Ottawa.....	60½	100	61	100	50	111	100	9·91
Montreal.....	66½	100	67	100	50	117	100	14·53

It is quite obvious that no proper distinction is made in rates at the present time between the freight and the express service. With similar collection and delivery services the express rate is still lower instead of higher.

While express operations are accompanied by deficits, those deficits are not of such a startling character, in my opinion, as to justify the express companies receiving the same treatment that the railways have received. As a matter of fact, the companies' own application, on the merchandise scale rates themselves does not ask for as great a measure of relief. On the other hand, the companies' application as to commodity rates, if acceded to would result in increases which have been shown to range, in some instances, as high as 100 and 200 per cent, and notwithstanding the somewhat lower rate of advance asked in the merchandise scale, would result in increases even greater than those enjoyed by the railways.

The commodity rates alluded to will be covered later more in detail. Being of the opinion as I am that these commodities ought to be continued and not cancelled, a somewhat more generous treatment can be given to the merchandise scale rates than if the commodity rates were abolished. It is manifestly in the public interest that the commodity rates, covering as they do the staple and cheaper articles required by the consuming public in large quantity should be continued, rather than that the present charge on the occasional express parcel, or on standard merchandise which can well afford to pay a higher charge, should not be materially increased.

Before arriving at the conclusion that the basis proposed herein, *i.e.*, 1½ times the average freight rate plus 60 cents ought to be adopted, it was necessary to work out the relationship which that basis would create as between freight and express rates. For practical purposes of comparison distances up to 1,000 miles have been worked out. The following statements show, in the first column, the mileage; in the second, the distance, expressed in blocks of 50 miles; in the third, the average standard first-class freight rate; in the fourth, the average first-class freight rate plus 50 per cent; in the fifth, the rate for the number of blocks under consideration in each case, omitting fractions; in the sixth, the resultant merchandise express rate; and in the seventh, the percentage of the express rate over the average first-class freight rate:—

EASTERN SCALE.

Miles.	Number of blocks of 50 miles.	Average standard 1st class freight.	Average one and one half.	Rate per 50 mile block.	Proposed 1st class express.	Percentage of 1st class express over average 1st class freight.
50	1	27.55	41.325	cts. 41	cts. 80	190.381
100	2	44.10	66.150	33	100	126.757
150	3	55.20	82.800	28	120	117.391
200	4	63.40	95.100	24	140	120.820
250	5	71.40	107.100	21	160	124.089
300	6	81.00	121.500	20	180	122.222
350	7	93.50	140.250	20	200	113.903
400	8	99.00	148.500	19	220	122.222
450	9	106.75	160.125	18	240	124.824
500	10	113.50	170.250	17	260	129.074
550	11	119.25	178.875	16	280	134.800
600	12	126.75	190.125	16	300	136.686
650	13	137.75	206.625	16	320	132.304
700	14	149.75	224.625	16	340	127.045
750	15	158.25	237.875	16	360	127.488
800	16	169.75	254.625	16	380	123.858
850	17	181.00	271.500	16	400	120.994
900	18	192.75	289.125	16	420	117.898
950	19	203.00	304.500	16	440	116.748
1000	20	212.75	319.125	16	460	116.216
Totals.....		2404.40	3607.10	401 ÷ 20 = 20c. Average per block.	... ..	2545.720 ÷ 20 = 127.286

It will be noted that the average of the merchandise express rate is 127.286 per cent over the average standard first-class freight rate; or, in other words, may be expressed as 227.286 as against the former standard of 250.

The following calculation, worked out on the same basis, results, on the prairies, in a percentage for express rates of 117.723 over the freight rate.

PRAIRIE SCALE.

Miles.	No. of blocks of 50 miles.	Average standard 1st-class freight.	Average one and one-half.	Rate per 50 mile block.	Proposed first-class express.	% of 1st-class express over average 1st-class freight.
				cts.	cts.	
50	1	28.65	43.025	43	85	196.684
100	2	48.90	73.350	37	110	124.948
150	3	67.10	100.650	34	135	101.192
200	4	80.90	121.350	30	160	97.774
250	5	93.70	140.550	28	185	97.438
300	6	104.60	156.900	26	210	100.764
350	7	115.90	173.850	25	235	102.761
400	8	126.70	190.050	24	260	105.209
450	9	137.10	205.650	23	285	107.877
500	10	149.80	224.700	22	310	106.942
550	11	160.00	240.000	22	335	109.375
600	12	170.00	255.000	21	360	111.764
650	13	180.00	270.000	21	385	113.888
700	14	189.50	284.250	20	410	116.358
750	15	199.00	298.500	20	435	118.592
800	16	207.00	310.500	19	460	122.222
850	17	215.75	323.625	19	485	124.797
900	18	224.50	336.750	19	510	127.180
950	19	232.50	348.750	18	535	130.107
1000	20	240.75	361.125	18	560	132.606
Totals ..	...	2,972.35	4,458.575	...	...	2,334.478 ÷ 20 = 117.723

Calculations on the British Columbia business follow.

PACIFIC SCALE.

Miles.	No. of blocks of 50 miles.	Average standard 1st- class freight.	Average one and one- half.	Rate per 50 mile block.	Proposed first-class express.	% of 1st- class express over average 1st- class freight.
				cts.	cts.	
50.....	1	34.25	51.375	51	90	162.773
100.....	2	63.90	95.850	48	120	87.793
150.....	3	85.70	128.550	43	150	75.612
200.....	4	102.90	154.350	39	180	74.927
250.....	5	119.90	179.850	36	210	75.145
300.....	6	135.40	203.100	34	240	77.252
350.....	7	152.50	228.750	33	270	77.049
400.....	8	169.50	253.250	32	300	76.991
450.....	9	182.50	273.750	30	330	80.821
500.....	10	197.90	296.850	30	360	81.910
550.....	11	211.50	317.250	29	390	84.396
600.....	12	224.50	336.750	28	420	87.082
650.....	13	237.00	355.500	27	450	89.873
700.....	14	249.00	373.500	27	480	92.771
750.....	15	259.50	389.250	26	510	96.531
800.....	16	267.00	400.500	25	540	102.247
850.....	17	275.75	413.625	24	570	107.071
900.....	18	284.50	426.750	24	600	111.001
950.....	19	292.50	438.750	23	630	115.384
1000.....	20	300.75	451.125	23	660	119.451
Totals.....		3,846.45	5,768.675	.....	.....	1,876.080 ÷ 20 = 93.804

As it will be observed that the Pacific scale gives an average of but 93.804 over the freight rate basis.

The average of these average percentages gives a percentage over the standard first-class freight rate of 112.937, resulting in 212.937 as against the old theoretical 250 standard. It is, of course, extremely difficult by any calculations to arrive at what actually will happen under any scale of rates, or any increase. The effect of increases can be ascertained only after they have been put into practical operation, much depending on the amount of business and changes in the character of the articles transported. Again, mere averages can only approximate the truth. Doubtless some particular hauls can be discovered where the ratio would differ from the ratios above given, although on the whole they point probably to as near the truth as it is possible to come.

The averages, however, truly give the result of the movements shown under the basis proposed.

A practical illustration of the actual working difference between freight and express, in so far as the general public is concerned, is afforded by the following statement, which is similar to the statements already given, except that into it is introduced the proposed increased express rate, and the cost of the railway cartages is also retained:

From Toronto to	Rates per 100 lbs.		Minimum freight rate.	Maximum weight.	Add two cartages.	Freight total.	Express for same weight.	Express per cent over freight.
	Fght.	Expr.						
	cts.	cts.	cts.		cts.	cts.	cts.	
Hamilton	29	80	50	172	50	100	138	38·00
St. Catharines	37½	100	50	134	50	100	134	34·00
Guelph	32	80	50	156	50	100	125	25·00
London	46½	120	50	108	50	100	130	30·00
Chatham	54½	140	55	100	50	105	140	33·33
Windsor	54½	160	55	100	50	105	160	52·38
Kingston	52	140	52	100	50	102	140	37·25
Ottawa	60½	180	61	100	50	111	180	62·16
Montreal	66½	200	67	100	50	117	200	70·94

Exact uniformity of increase over freight rates can never be obtained unless the express rate was in every instance calculated on the exact freight rate between every two given points, and on the actual mileage, as the freight rate is. This is, however, entirely impracticable. The express business is a rush business and of necessity, therefore, its tariffs avoid the details and complexities entering into the freight tariffs.

The increases in the standard scale work out on a different basis in each division. While Eastern Canada will still enjoy a lower rate than the prairies, and while the prairies in turn will enjoy a lower rate than British Columbia, these increases will work out an average of 45·94 per cent in the East, 23·75 per cent on the prairies, and 11·48 per cent in British Columbia.

This is but a further step to that already taken by the board in its judgment of 1913, in the direction of obtaining a more uniform rate structure throughout the whole country, many of the reasons justifying a lower rate structure in the east, in so far as railway services are concerned, not applying with as much force to express rates.

Again, the above averages also show that while the proposed scales are constructed mathematically, the old scales were not, and the effect of discriminations and differences disappears.

So many claims have been made as to the percentage of increases that it is advisable to set out the calculations supporting these averages. They are as follows:—

Comparison of Present Express Rates per 100 pounds. Eastern Canada
(Schedule "A").

Miles.	Present.	Proposed.	Percentage of increase.
25.	40	80	100·00
50.	50	80	60·00
75.	60	100	66·66
100.	75	100	33·33
150.	90	120	33·33
200.	100	140	40·00
250.	125	160	28·00
300.	125	180	44·00
350.	150	200	33·33
400.	150	220	46·66
450.	175	240	37·1428
500.	175	260	48·5714
550.	200	280	40·00
600.	200	300	50·00
650.	225	320	42·22
700.	225	340	51·11
750.	250	360	44·00
800.	250	380	52·22
850.	275	400	45·45
900.	275	420	52·72
950.	300	440	46·66
1,000.	325	460	52·33
1,050.	325	475	45·1538
1,100.	335	490	50·7692
1,150.	350	505	44·2714
1,200.	350	515	47·1428
1,250.	375	530	41·33
1,300.	375	540	44·00
1,350.	400	555	38·75
1,400.	400	565	41·25
1,450.	425	575	35·2941
1,500.	425	585	37·6235
1,550.	450	595	32·22
1,600.	450	605	34·44
1,650.	475	615	29·4736
1,700.	475	620	30·5263
1,750.	500	630	26·00
1,800.	500	635	37·00
1,850.	525	645	22·8571
1,900.	525	650	23·8095
1,950.	550	655	19·09
2,000.	550	660	20·00
		Average.....	80,539·8551
			÷ 2,000 = 40·2699

COMPARISON of present and proposed Express Rates per 100 pounds—Prairie Section—
(Schedule B.).

Miles.	Present.	Proposed.	Per cent. of Increase.	Miles.	Present.	Proposed.	Per cent. of Increase.
	cts.	cts.			cts.	cts.	
25.....	50	85	70·00	1550.....	550	750	36·36
50.....	60	85	41·66	1600.....	550	765	39·09
75.....	75	110	46·66	1650.....	575	780	35·6522
100.....	100	110	10·00	1700.....	575	790	37·3913
110.....	100	135	35·00	1750.....	600	805	34·16
150.....	125	135	8·00	1800.....	600	815	35·83
160.....	125	160	28·00	1850.....	625	830	32·80
200.....	150	160	6·66	1900.....	625	840	34·40
210.....	150	185	23·33	1950.....	650	850	30·7692
250.....	175	185	5·7142	2000.....	650	860	32·3076
270.....	175	210	20·00	2050.....	675	870	28·88
300.....	200	210	5·00	2100.....	675	880	30·3703
330.....	200	235	17·50	2150.....	700	890	27·1428
350.....	225	235	4·44	2200.....	700	900	28·5714
400.....	225	269	15·55	2250.....	725	910	25·5168
450.....	250	285	14·00	2300.....	725	920	26·8959
475.....	250	310	24·00	2350.....	750	930	24·00
500.....	275	310	12·72	2400.....	750	940	25·33
550.....	275	335	21·81	2450.....	775	950	22·5806
600.....	300	360	20·00	2500.....	775	960	23·8709
625.....	300	385	28·33	2550.....	800	965	20·6250
650.....	325	385	18·4615	2600.....	800	970	21·25
700.....	325	410	26·1538	2650.....	825	975	18·18
750.....	350	425	24·2857	2700.....	825	980	18·78
800.....	350	460	31·4285	2750.....	850	985	15·8823
850.....	375	485	29·33	2800.....	850	990	16·4705
900.....	375	510	36·00	2850.....	875	995	13·7142
950.....	400	535	33·75	2900.....	875	1000	14·2857
1000.....	400	560	40·00	2950.....	900	1005	11·66
1050.....	425	580	36·4705	3000.....	900	1010	12·22
1100.....	425	600	41·1764	3050.....	905	1015	9·7297
1150.....	450	620	37·77	3100.....	925	1020	10·2702
1200.....	450	635	41·11	3150.....	950	1025	7·8947
1250.....	475	655	38·3158	3200.....	950	1030	8·4210
1300.....	475	670	41·0562	3250.....	975	1035	6·1538
1350.....	500	690	38·00	3300.....	975	1040	6·66
1400.....	500	705	40·10	3350.....	1000	1045	4·50
1450.....	525	720	37·1428	3400.....	1000	1050	5·00
1500.....	525	735	40·00				

85,298·3130
 ÷ 3,400 = 25·0873

It will be noted from the above statements that if the full distance covered by the scale is taken in each case, the percentage of increase over the present schedule is 40.27 in eastern Canada, 25.09 in the prairies, and 26.04 in British Columbia. The precise percentages, however, are those already set out. The reason for the variation in the percentages for the 1,000 miles lies in the fact that while "A" schedule covers only 2,000 miles, that of "B" represents 3,400 miles, and "C" 4,000 miles. The regular practice in both freight and express services is that a shipment passing from one rate territory to another takes the rate of the higher scale for the through movement; consequently the radius of the "B" and "C" schedules is greater than is actually necessary for a purely intra-division movement.

The real average relationship between the three territories up to the 1,000-mile limit is as follows: At the present the prairies are 39.55 per cent over Eastern Canada, and British Columbia is 29.29 per cent over the prairies. On the New scale the prairies will be but 17.88 per cent over Eastern Canada and British Columbia but 15.01 per cent over the prairies.

A further modification must be made in the tables which will slightly, but not materially, change the percentages, and the change will be in ease of traffic. Since these tables were worked out I have come to the opinion that a slight change must be made in them; but it is hardly necessary that the case, which has already stood so long, should stand longer for the purpose of re-making the lengthy calculations.

It has been observed that the basis of the rate for the first 1,000 miles is one and one-half times the freight rate plus 60 cents. The rates so produced and approximated result in a schedule in Eastern Canada of 20 cents per block; in western Canada, 25 cents per block; in British Columbia, 30 cents per block up to 1,000 miles, which result in the average percentage already set out.

I am of the opinion that the basis over 1,000 miles should be changed as follows:—

		Per Block.		
		A.	B.	C.
		cts.	cts.	cts.
To 1,000 miles (as proposed)		20	25	30
Over 1,000 " to 1,200 miles		15	20	25
" 1,200 " " 1,800 "		10	15	20
" 1,800 " " 2,000 "		5	10	15
" 2,000 " " 2,500 "			10	10
" 2,500 " " 3,400 "			5	5
" 3,400 " " 4,000 "				5

Much has been said during the investigation as to the American rates. It is to be borne in mind that the present American rates have resulted in large deficits; also that in the Eastern States particularly the express traffic is so great that solid express trains are run, so that it is somewhat difficult to find any great analogy in the two countries. It may, however, be of interest to know that to some extent similar conditions exist in both countries, and which have resulted in somewhat similar rate structures.

The states of the Union are divided into five zones outlining sections of the country within which similar traffic conditions generally obtain, and each, therefore, having a uniform basis of rates. Three of these may be referred to. They are: Zone 1, being that part of the United States south of division "A" in Canada; zone 3, with conditions approximating those of division "B" in Canada, and zone 4, corresponding with division "C."

The existing American rates in these zones, and as now proposed in Canada may be illustrated as follows:—

EASTERN ZONE.			PRAIRIE ZONE.		MOUNTAIN ZONE.	
Miles.	Canada, Schedule "A"	U. S., Zone 1	Canada, Schedule "B"	U. S., Zone 3	Canada, Schedule "C"	U. S., Zone 4
	cts.	cts.	cts.	cts.	cts.	cts.
50	80	82	85	88	90	126
500	260	203	310	297	360	374
1000	460	291	560	484	660	605
2000	660	495	860	863	1060	1072
2500			960	1023	1165	1259

In the investigation conducted by the Interstate Commerce Commission, the average distance per package was placed at about 200 miles, and the average rate per package at 50 cents. Information as to the haul per package and charge is not available as to the Canadian Express, whose figures cover shipments that may include many packages. Statistics of the Dominion Express show that the average haul per package is 346 miles and average revenue 62.20 cents.

It will be observed that with the exception of the initial 50-mile block in which the Canadian rate is lower, rates in the districts of great traffic density in the eastern states are lower than those in Eastern Canada.

Comparing the prairie with its corresponding territory to the south, the Canadian rates are lower up to 250 miles, when they become slightly higher and remain higher until the haul for 1,900 miles is reached, when they again become lower and continue on a lower basis.

Comparing the rates in British Columbia with the American rates, the former commence lower and remain lower until the 650-mile haul is reached, when they are higher and remain higher up to 1,800 miles, when they become equal, the Canadian rate being the lower from there on.

Special representations were made at the hearing at Moncton with reference to express rates to and from Prince Edward Island. It developed at the hearing that the chief cause for complaint related to a proposed arbitrary charge of 25 cents per 100 pounds, for the ferry service to and from the island. This arbitrary charge was supported by the companies on the ground that the Canadian National Railways, continued the arbitrary charge of 20 cents of the former steamship connection for its new ferry service between Port Borden and Cape Tormentine, and that another five cents was added to recoup the cost of transfer to and from the ferry at Port Borden.

An old grievance of Prince Edward Island lay in the fact that originally freight rates to and from the island were built up first, by the island rate, secondly, by the ferry rate, and thirdly, by the mainland rate. The contention of island shippers has always been that they were entitled to connection with the mainland; that their railway system was part of the whole; that they were entitled not only to through bills of lading but also to the through rate, arrived at, as other through rates on the system are arrived at, on a mileage basis, and that the ferry could only be looked upon as a bridge substitute and could not support in justice an arbitrary charge. In other words, the island shippers claimed to be put, as of right, on the same basis as mainland points and merely subject to the general mileage table. In this present application the island delegation points out that express freight to stations in Cape Breton also cross from the mainland by a car ferry, and that no arbitrary is charged for the ferry service.

They argued that the charge would constitute an arbitrary and unreasonable tax on the consuming public, especially in the fact of the Government's promise that the three short haul combination grievance would be removed; that the distance from Tormentine to Port Borden was only ten miles, and that on the completion of changes which ought to be made in the present year, goods will be brought to destination without breaking bulk.

It was also pointed out that assurances were given by the Government that when the car ferry service would be put into operation the short haul rate grievance they had so long been handicapped with would be removed, and that as far as ordinary freight was concerned that grievance had already been remedied.

In my opinion any provision in the express companies' proposed tariffs for this additional 25 cents per 100 pounds, ought to be struck out. It may be noted that the charge now made is just as great as when the ferry movement was made from Pictou Landing to Charlottetown, a distance of 53 miles. It is entirely inconsistent to maintain this supercharge on express services in view of the action already taken as to freight. Under the special circumstances of this case, I would regard the ferry service merely as an incident in the through haul, and, as stated, would strike out the arbitrary charge. I am free to admit that the Canadian National System operates at a large loss and that the money is required, and urgently required, but this is not the manner in which to obtain the revenue. The express companies do not pay enough for express privileges. A cost per express car of 35 cents a car mile can be easily supported on the Intercolonial passenger train operating costs. The Grand Trunk on a similar basis (i.e. the 50-50 division) only received from the express company a return of 27.63 cents a car mile. The contract with the express company ought to be recast and a depleted revenue thus assisted, rather than at the expense of Prince Edward Island.

SCALE "N" RATES.

For the sake of uniformity with the American practice, the express companies desire to call their merchandise rates first-class rates, and the scale "N" rates second-class rates. There is, of course, no objection to the change in the nomenclature. This scale covers the following commodities:—

‡ Bread,	Meat (fresh or cured),
Butter,	Milk, including buttermilk,
Bulbs,	Oysters,
Cheese,	Poultry (dressed),
Clams,	Sausages,
Cream,	Scallops,
Eggs (market),	Shrimps,
Fish (fresh or cured),	Seeds and seed grain,
Fruit (fresh or dried),	Soda biscuits,
Honey,	Vegetables,
Lard and substitutes,	Yeast.
Maple sugar and syrup,	

This special scale was drawn, in the first instance, to cover the movement of more or less perishable articles, the products, in the main, of the farm and of the fisheries, and which, therefore, particularly require an express service rather than the freight service. In conformity with the principle, now that it is in general use, oleomargarine ought to be added to the list. In view of statements recently made that a considerable movement of rabbits from the Okanagan district of British Columbia, could be made to consuming centres, I am of the opinion that rabbits (dead or dressed) should also be added to the list. I am also of the opinion that other articles of natural food which are in common use, and which may require to move in comparatively small lots, ought to be added to this scale as occasion requires. At the present time the Board's attention

‡ When at least 50 per cent is bread, a shipment may include fancy biscuits, cakes or crumpets.

has only been specifically directed to oleomargarine and rabbits, which will be added.

The rates in this scale are predicated on the merchandise rates. They will be 75 per cent of the first-class for the appropriate mileage on the block system. Under the old basis the reductions were calculated merely on the average, and as a result, when merchandise rates were, for example, \$1 to \$1.25, the scale "N" rate was \$1, and when the merchandise rates were \$1.25 to \$1.50 the scale "N" rate was \$1.20. Under the system which is proposed the merchandise rate of \$1 will give a second-class rate of 75 cents; that of \$1.10 a second-class rate of 85 cents, and \$1.20 will become 90 cents. Under the new system second-class rates will, on this percentage basis, be provided for each separate first-class merchandise rate, and the second-class rates will, for the lighter shipments, be graduated in the same way as the merchandise rates. As a result of calculating these reductions on the actual rate, instead of taking an average, it will be necessary to apply the graduate table. This action follows what has been found necessary to be done in the United States, and as a result, in shipments of certain weights the full actual percentage reduction will not therefore, be secured. It would appear that the actual reduction of 25 per cent from the first-class scale, as graduated on the whole volume, will not only place the rates on a more proper basis, but in the main will be productive of lower charges.

It may appear that the same principle adopted in the commodity rates ought to be applied to the scale "N" rate, as articles moving under scale "N" consist of essential foods, produce of the farm and fisheries, and enter into the present high cost of living. The position, however, and the underlying results are entirely and essentially different. The commodity rates refer to bulk movement on which the profits of the producer, whose margin is usually small, depend upon them.

The scale "N" rates cover smaller shipments and are largely used by packers in distribution. The following table gives in its first column the mileages from 50 up to 450; the second column the appropriate rate under the old scale; the third rate under the new; the fourth the actual increase per 100 pounds, the fifth, the actual increase per pound expressed in decimals of the cent, and the sixth, the actual increase of eggs per dozen, also expressed in the cent decimals.

Miles.	Old Scale N.	New.	Increase per 100 pounds.	Increase per pound.	*Increase per doz. eggs.
	cts.	cts.	cts.	cts.	cts.
50	40	60	20	0.2	0.366
75	50	75	25	0.25	0.466
100	60	75	15	0.15	0.283
150	70	90	20	0.2	0.366
200	80	105	25	0.25	0.466
250	100	120	20	0.2	0.366
300	100	135	35	0.35	0.641
350	120	150	30	0.3	0.55
400	120	165	45	0.45	0.82
450	140	180	40	0.40	0.73

Butter and eggs are two important commodities moving under the scale. It will be observed that the resultant increase per pound of butter in no case equals one half cent a pound. In like manner the increased cost of shipping eggs, which almost invariably move in shipments of two cases and upwards, never reaches one cent a dozen. The resultant profit, however, to the express company is material and the revenue of the companies will, as I believe, be placed upon a proper basis although the commodity advances are refused, and without any appreciable hardship to anybody.

* On basis of 2 cases 110 lbs., 60 dozen.

GRADUATED CHARGES.

The express classification includes a table of graduated charges for shipments weighing less than 100 pounds. The form of the submitted tariffs, instead of giving only the rates per 100 pounds, in the usual way, incorporates the graduated scale by giving the charge for the various lesser weights, as set out in the sixth and following pages of the application. Put another way; freight rates are stated in terms of the hundred pound unit, and no charge is accepted for less than 100 pounds; the reason for this being, of course, that freight traffic is heavy traffic. The express rates for weights over 100 pounds, are similarly stated; but it is clear that the system appropriate to heavy traffic could not well be adapted to a business the great bulk of which consists of small packages, or shipments of a few pounds; hence the scale of "graduates."

The tariffs submitted by the companies have been enlarged so as to provide head-line per 100 pound rates in all the multiples of 10 cents with the corresponding graduates.

Under the old system, the multiple of 10 was only carried as far as the 60-cent rate. Rate spreads were made above 60 to 90 of 15 cents each; and while the spread from 90 to 100 was of necessity only 10 cents, all higher rates were subject to a uniform spread of 25 cents. The companies' position is that the adoption of the flat multiple of 10 is a marked improvement, and that it is the greatest that can conveniently be made; that the tables would be too bulky were any lower multiple employed. I admit that the present proposal is a marked improvement. For example:—

A two-company haul carries a combination rate of \$2.80. The existing plan would make the charge for say 70 pounds, under the next higher \$3 head line, \$2.20. By the introduction of the new intermediate columns, however, the submitted schedule has both a \$2.80 and a \$2.90 head-line, the former making the 70-pound graduate \$2.05, a difference of 15 cents.

For the reasons, however, more particularly set out in that portion of this judgment which deals with wagon services, as well as more closely to provide for the carriage of every parcel at as nearly as may be its proper proportionate rate, it will be necessary that the tariffs be entirely re-cast so as to provide for graduates under multiples of only five cents.

The foregoing applies particularly to rates. In so far as weights are concerned, the companies proposed tariffs increase by the individual pound unit up to fifteen in the place of ten as heretofore, before the multiple of five pounds is adopted. This is a distinct improvement. While the underlying necessity of increased revenues cannot be lost sight of, as a result of these improvements, certain movements, although under the increased basic rate, will be cheaper. Many reductions will result. An illustration taken at random will suffice:—

Merchandise head-line rate \$1.50.		Present.	Proposed.
lbs.		cts.	cts.
4.	.....	40	35
5.	.....	45	35
6.	.....	50	35
7.	.....	50	40
8.	.....	50	40
9.	.....	55	40
10.	.....	55	40
15.	.....	60	50

These reductions are the inevitable result of placing rates upon a fairer and more equitable basis and carrying out the attempt to remove differences. It may be noted that the increases which on certain shipments under Scale 'N' will result by the adoption of the graduate table as proposed, is thus largely offset. The adoption of the revised table affects more particularly shipments over 50 pounds, and as revised by this judgment, the penalty of the graduate is small. Recent statistics, owing to the move-

ment of merchandise that ought to have gone by freight but shipped by express because of the pressing necessity of haste brought about by the war, cannot be looked upon as at all characteristic; but the statistics of the Dominion Express Company, immediately before the war period, give the following results:—

Years 1911, average weight per shipment..	44'3
" 1912, " " " " " " " " " "	44'4
" 1913, " " " " " " " " " "	54'1
" 1914, " " " " " " " " " "	54'3
Average for the 4 years..	49'275

COMMODITY RATES.

The companies' proposals involve the elimination of commodity rates except for carloads, and for carloads their proposals are almost as radical, as the present commodity rate as such is struck out, and the carload movement would take a rate 60 per cent of the increased first-class rate. The existing commodity rates apply to staple food products; in the main to fish (fresh, dried, or smoked), cream, fruit, and vegetables. Fresh fish, cream, fruit, and fresh and green vegetables, owing to their perishable nature, must move by the accelerated express service.

The express companies propose to raise the carload rate on the Pacific fish from Prince Rupert and Vancouver to Montreal from the existing rate of \$3 to \$7.20 per 100 pounds. This is an extreme instance. The old rate met the competitive Seattle rate, and movements of Pacific fish to corresponding eastern Canadian and American consuming centres took the same rate. The ordinary rules as to competitive rates do not here apply. The underlying basis of the freight tariffs adopted in both countries results in common transcontinental rates. It is impossible to work the matter out on any other basis. Personally, I am satisfied that the companies, even if permitted to carry out their intention, would find that it was impossible to do so, and would return to the old basis in so far as the transcontinental movement is concerned. But in any event, whether this is so or not, the underlying principle of transcontinental rates of many years standing, adopted as it was in the first instance by the transportation companies themselves, and their continuance being, as it is, in the public interest, and as I see it, in the interest of the transportation companies themselves, cannot be interfered with. The American transcontinental rate has been raised from the basis of \$3 to \$3.40, and the appropriate increases in the transcontinental rates can be made in Canadian territory.

On the movement of fish, in carloads, from the Pacific to Winnipeg the existing rate of \$2.50 would become \$5.30 (Dominion Companies' Vancouver basis), and the less than carload rate would be raised from \$3 to \$6.70. In like manner, the existing rate from Mulgrave, N.S., to Montreal of \$1.50 would become \$3.

An exhibit filed on behalf of the Canadian Fisheries Association showed the increases as running from 75 per cent to 175 per cent on less-than-carload movements from Nova Scotia, and 127½ per cent to 140 per cent on carloads from Vancouver to Toronto and Montreal. The companies' proposals entail like treatment and, consequently, extreme increases from the fish producing points on lake Huron and lake Superior, and in the Middle West.

The greatest producing fruit districts in Canada are in Ontario and British Columbia. The companies' proposals would again work great increases and a great dislocation of business. The present rate on fruit, in carloads, from Winona to Winnipeg is \$2; it would be \$4. The present rate on L.C.L. shipments from Winona to Winnipeg is \$2.65; it would become \$5.05. In like manner the rate from Vancouver, B.C., to Winnipeg on fruit, in carloads, which is now \$2, would become \$5.30; and in less than carloads the rate, which is now \$2.65, would become \$6.70. As vegetables take the same commodity rates that fruit takes, the result to the movement of these staples would be just the same as fruit and need not be exemplified.

The result of the companies' proposals treats cream shipments in a manner equally drastic. Cream moves in can containers of five, eight and ten gallons. The rates on the eight-gallon can, which when filled weighs some 100 pounds, affords the best illustration. They work out as follows:—

Miles.	Eastern Territory.		Prairie Territory.		British Columbia.	
	Present.	Proposed.	Present.	Proposed.	Present.	Proposed.
	cts.	cts.	cts.	cts.	cts.	cts.
25.....	25	60	25	70	30	70
50.....	31	60	31	70	35	70
75.....	36	75	36	85	40	90
100.....	41	75	41	85	45	90
150.....	51	90	51	105	55	115
200.....	61	105	61	120	65	135

All rates per can.

While the increases, as indicated, are heavy, they do not, however, tell the whole story. At the present time the empty cans are returned at the nominal rate of 5 cents per can. The companies' proposal, if adopted, would increase the rate of these returned cans to one-half the increased outward rate per 100 pounds. On the average they would appear to weigh slightly under 25 pounds. Accepting 25 pounds, however, as fairly characteristic, it would mean that four cans which were formerly returned at 20 cents on the short mileage of 25 miles, would take a rating of 30 cents in Eastern territory, of 35 cents in Western and British Columbia territory. For distances of 75 miles as against the nominal charge of 20 cents, the rate would become 38 cents in Eastern territory, 43 cents in Prairie territory, and 45 cents in British Columbia. For a distance of 200 miles, the 20-cent rate in Eastern territory would become 53 cents; in Western territory 60 cents, and in British Columbia 68 cents.

I am ready to admit that the value of all commodities has very greatly increased since commodity rates first came in, and that one of the elements in rate making relates to the value of the commodity carried and to the increased risk undertaken. As against the shippers and vendors of these articles of daily necessity, there is no difficulty in the express companies justifying a reasonable increase. I do not think, however, that the matter ought to be so considered at the moment. The companies will obtain a fair measure of increase in their first-class and second-class rates. That increase it is hoped will prove sufficient to properly maintain the companies and the business; but whatever increase is placed on these commodities would form a reason, (a comparatively small one it is true in most instances, but still a reason), for further increases in the charge made to the consumer. In the past experience it would appear that the increase in charge to the consumer would be much greater than the increased cost per pound or per pint of the commodity. The cost of living is still mounting. As I see it, it is not to the public interest, and not in the interests of the express companies themselves, to afford the excuse that a raise in the price of transportation of these essential commodities would give for still higher charges against the public. Over and above the essential interest of the consumer, a further and very real ground for withholding increases in these commodity rates, unless it proves to be absolutely necessary, lies in the position of the producer. The commodity rates are the producer's rates. He produces in quantity and ships in bulk. On the pound unit of production, his resultant profit is small. His costs have greatly increased. I would dismiss the companies' applications, in so far as the commodity rates are concerned, entirely, subject to the right of the companies, should it be found impossible for them to make both ends meet, to renew the application. I have mentioned only the chief commodity rates, but would deal with all on the same basis.

It is only fair and just, however, that a modification should be made with reference to wagon service applicable to the commodity movement. Maintaining, as this judgment does, an admittedly low basis, I am of the opinion that in connection with their commodity rates for less than carloads the companies should be permitted to cancel their wagon service of collection, still, however, performing wagon service at cartage points of destination. As regards carload commodity rates, carrying as they do a further reduction, in my judgment the rates should be entirely exclusive of wagon service; but the companies should be required to have such commodities in carloads switched the team tracks adjacent to the passenger station at the point of destination, conveniently for unloading and without additional charge to the consignee. The hardship, if any, ought not to be so great as would appear on the surface, in view of the fact that the majority, at least, of the dealers in these particular commodities have their own wagons. So far as the empty cream cans are concerned, these, as already shown, are returned at the nominal figure of five cents each, and this rate will be continued for the present. Now, however, this nominal charge includes the service of wagon collection, which means, of course, that judged by itself, this service is given at a distinct loss to the companies. In my view it is only fair that this nominal rate should cover rail transportation only, and that the dealers themselves should deliver these empties to the express companies at the railway station.

The British Columbia carload tariff permits the opening for partial unloading of a carload of fruit in transit at any one point directly intermediate to the contractual destination, at an additional charge of \$5. The British Columbia shippers much desire to have this privilege extended so as to include two unloadings in transit. The present stopover charge permits the shipper to take advantage of the lower rating when he is unable to obtain a sale for the total quantity of fruit at the one point, and when the demand is sufficient at destination and at one intermediate point to absorb the whole. It appears that the lower rate cannot be taken advantage of if an additional opening and partial unloading in transit were allowed.

In the United States adjacent territory two such openings are allowed at \$5.50 each. In my opinion the request of the British Columbia shippers is reasonable. I would allow the extra opening; each opening to be subject to an additional charge of \$5.

The Ontario shipper to prairie destinations ought to have the like privilege on payment of the same additional charge.

SECTION "D."

This section of the express classification applies on books, circulars, calendars and other printed matter, blue prints, maps, photographs, engravings, chromos, sheet music, and the like, and was initiated to compete with the postal service. The post office rate applies, viz., one cent for each two ounces or fraction thereof, subject, however, to a minimum charge of 10 cents, except that for a shipment between points one of which is east of Sudbury and the other west of Winnipeg the minimum charge is 15 cents. The conditions as to prepayment, weight and size are also those of the post office.

The newer parcels post must, I should think, have had the effect of diminishing the volume of section "D" traffic, as lots up to 11 pounds may be shipped that way without breaking them into smaller packages.

Under the application as presented this section would disappear. It has been the contention of the companies that as it was inaugurated as a competitive measure it should be permissible for them to withdraw from the competition whenever they desired to do so.

Apart from losing the alternative service, the cancellation of the section would, as I see it, affect the public only in the matter of liability for loss of the goods. The post office indemnifies for the actual value to a maximum of \$25 on payment of its

extra registration fee of 5 cents; the express companies require no extra fee, but they insure to a maximum of \$10 only.

There is no principle under which, apparently, the articles moving under this scale are, as of right, entitled to any better classification than the general merchandise scale. Cancellation of the scale cannot, therefore, be objected to by the Board.

SCALE "K."

The companies in the past have maintained this scale, which constitutes a special tariff applicable to shipments of beverages as follows:—

"Ale, beer, spruce and ginger beer, cider, ginger ale, pop, soda water, mineral and spring waters and coca cola."

The rates are predicated on the merchandise tariff on the method of scale "N," and apply on the actual weight, or what is called the "pound-rate basis," but subject to a minimum charge of 30 cents a shipment. On movements of 40 miles, the reduction from the merchandise tariff is 25 per cent; over 40 to 50 miles, 30 per cent; over 50 to 90 miles, one-third, and all distances over 90 miles, 40 per cent. The origin of this scale is somewhat obscure in so far as Canada is concerned, but appears to have been copied from the United States. It probably originated in that territory when breweries were not so numerous as they have been of later years, and when beer was extensively distributed by express, in kegs, and frequently in car loads. The application of the express companies is to strike out the scale altogether. While I know of no reason why these beverages, which are in a sense luxuries, ought to deserve any special treatment, some consideration ought to be given to long standing practice and to the facts that they move more or less continuously; that the greater part of the weight is represented by containers, and that they possess the advantage of economical stowage. The scale applies only to closed cases and barrels. In view of these considerations, I would not comply with the companies' application, which would mean that these beverages would move on the first-class scale. I would follow the action of the Interstate Commerce Commission, which, when revising the express schedules, struck out this scale, but included the articles in the second class. The scale may, therefore, be abolished; but the articles now moving under it must be added to the second class or scale "N" rates.

"500 POUND SPECIAL."

The express companies have a special scale on merchandise in lots of 500 pounds and over. This scale has never had any existence in the United States. It would appear to have had its origin in earlier days when the Vickers Express, having an independent ownership, sought to obtain freight which otherwise would have moved by freight. These heavy movements really belong to the freight service rather than to the express business. Passenger trains are often delayed by reason of express congestion. The scale itself had a general average of 22 per cent below the merchandise tariff, consequently it does not apply to scale "N" traffic, which takes a lower rating. There is no underlying principle on which the scale can be justified. Had any objection been made to it by smaller shippers on the grounds of discrimination, effect would have had to be given to this application. The scale is clearly discriminatory in that it gives the larger shipper advantage over the smaller, and ought to be struck out.

BLOCK TARIFFS.

In United States territory the Interstate Commerce Commission has given much consideration to the method of stating rates. In the considered Judgment which has already been referred to, that commission says:—

"Simplicity is the ultimate essential in express matters. Upon this principle the postal service has been developed. Instead of becoming more and more involved in classification, rules, and rates, as has been the tendency, there must

be a complete reversal of policy in this regard if the express company is to avail itself of its opportunities. And it may further and no less emphatically be said that upon no other principle can there be an avoidance of constant conflict with the law, for it is manifest that neither shippers nor express-men know the express rates of the country, nor can experts be certain that the rates they quote are certainly the lawful rates, so many are the conflicting rules, routes, and scales.

"As a fundamental we must have a simpler method of stating rates, one that is understandable; a foundation must be laid upon which to build a rate structure that shall be equitable. There is certain to be discrimination so long as there is indefiniteness and ignorance.

"There are some thirty-five thousand express stations in the United States. To separately state the rates from each one of these stations to each of the others requires the statement of over 600,000,000 rates. The ordinary express agent is lost in the attempt to find a rate. With files of all the tariffs of all the express companies at their command, the rate clerks of the commission find it difficult and uncertain work to find the lowest legal rates applicable to shipments moving between two points, particularly when there are many possible routes and transfer points via which the shipments may move. It is small wonder, therefore, that so many overcharges and undercharges result. The loss of time, loss of revenue, and lack of efficiency resulting from this system of rates are incalculable."

The situation in Canada differs only in degree from that of the United States. The present situation is that under the International Block Tariff the agent at any express office in Canada is able to quote a through rate to any point in the United States, but cannot do the same for his own country, except with the expenditure of much time and labour, and with a great possibility of error creeping into his calculations and overcharges resulting therefrom. Such conditions are entirely inimical to a proper express service. The question has been considered by the Board's Chief Traffic Officer in great detail. His report on the subject is concise and is as follows:—

"In 1912 the Interstate Commerce Commission formulated the express rates to be applied throughout the United States on a so-called block system devised by itself. This system has since been applied to the international express tariffs between points in the United States and points in Canada. The express companies subject to the jurisdiction of the Board desire to adopt the system for their operations within the Dominion.

"In the United States the initial block is No. 101 in the extreme northwest corner, the 100 series following consecutively along the international boundary. The 200 series or tier commences with block No. 201, immediately south of No. 101, and continues east in the same manner, and so on; the highest number being 2,545, comprising the islands off the southern point of Florida.

"In the international tariffs the Dominion has been similarly blocked, the tiers numbering from the 49th parallel. The initial block is 5,819 (Albani, B.C.) and the numbers follow along the 49th parallel to Cochrane, Ont., where they end for the present, as there are no express offices on the same parallel east of Cochrane. The block with the lowest number of all is 3,102 at Windsor, Ont.

"The numbering is such that the last two digits are the same throughout the columns of blocks; thus 3,309, next north 3,509, next north 3,709, and so on.

"It is proposed to adopt the blocking of the international tariffs for the domestic tariffs also.

"Each block measures half a degree each way, and the constant dimension is, therefore, the north and south length, roughly $34\frac{1}{2}$ miles on the meridian; the width approximating 23 miles at the 49th parallel where the degree, according to information from the Geographical Department, measures 45.47 statute miles.

"Each block is subdivided into four sub-blocks by lines intersecting at right angles at the centre, lettered A, B, C, and D.

"This is the framework.

"Rates are shown between the sub-blocks in each main block. This provides for the local movements within that block.

"Medium hauls are taken care of by providing rates between the sub-blocks of any one main block and those in each of its three adjacent main blocks in all directions. Every main block therefore becomes the centre of a quadrilateral area comprising 49 main blocks, or 196 sub-blocks.

"The rates for the longer hauls are named from main block to main block, on the principle of more comprehensive grouping for the farther movements.

"To arrive at the appropriate rate between any two sub-blocks the line of railway is followed, counting each sub-block as 15 miles north or south and 12½ miles east or west.

"In the case of main blocks, or longer hauls, a pivotal or base point is established in each such block as near the centre as may be practicable; preference, however, being given to paramount commercial or distributing towns, or to points common to two or more express companies. The rates to or from all points in any one main block from or to all points in another main block, for these block to block movements, are the rates for the distance between the base point of the one and the base point of the other.

"In all instances the rates for the distances arrived at as in the preceding paragraph are those for the same distances shown in the mileage scales approved by the Board.

"All the express offices in Canada will be shown in alphabetical order by provinces in a "Joint Directory of Express Stations in the Dominion of Canada, showing block numbers and sub-block letters designating their locations," forming the key to the tariff of rates. Each block will have its own tariff covering all stations in that block to all stations in every other block. This tariff is simplicity itself in the fact that every express agent will have on two pages the rates from his station to every other express station in the Dominion.

"It is, of course, apparent that as a result of this system, points on the near side of the block, and at either end of the movement, may, by taking the base point rate, pay more than would be the case were the rate that applicable to the actual mileage under the approved scale. This will happen whenever the distance from or to the base point is just long enough to throw it into the next higher mileage group of the scale. If, for instance, the distance from the shipping point A to the destination B is 298 miles, while from A to the base point C is 315 miles, the 1st class rate applicable from A to B, if in eastern territory, is that from A to C, viz., \$2, although on the actual mileage basis it would be \$1.80. (Scale reads, over 250 to 300 miles, \$1.80; over 300 to 350 miles, \$2.)

"On the other hand, points on the far side of the block, and therefore beyond the base point, will have the advantage of the shorter mileage rate of the base point whenever a similar break between the scale groups occurs.

"It must be manifest that these are circumstances inseparable from the system, unless indeed, the shortest mileage be spread over the entire block—a supposition fatal to any standard tariff plan. In the United States the supercharge occurs much more frequently than would be the case under the Canadian plan, as the American block measures a whole degree each way and is, therefore, four times larger.

"The plan has several advantages. It is comprehensive and, as expressed in tariff form, simple.

"It is already in use in connection with traffic between Canada and the United States, and if approved for domestic traffic it will be continental.

"Instead of each company having its own series of tariffs, all companies will be represented in a single series to be published for and in behalf of all.

"Between two common points the shortest single line mileage will govern the rate; and no higher rates will be charged for carriage where the services of two or more companies have to be used than for a similar mileage of a single company. This is important.

"The plan has my recommendation."

The treating a two-company movement as but a single haul referred to, is a necessary result of the adoption of the block system and constitutes a direct concession in ease of traffic. A two-company haul involving, as it does, more handling and more accounting, is inevitably and naturally more expensive than a haul of the same mileage by a single line. At the present time shipments weighing less than 100 pounds, in a two-company haul, are charged the appropriate graduate, not under the per 100 pounds, rate of the single company scale as applied to the total mileage, but under the aggregate of each company's rate to and beyond the point of transfer. In the case of shipments of 100 pounds and over, and in the absence of joint through rates, the through charge is the sum of the charge of each company engaged in the joint service.

I would allow the tariffs to be stated in blocks.

CENTRAL CANADA EXPRESS COMPANY.

This express company operates on the lines of the Edmonton, Dunvegan and British Columbia Railway Company. The railway runs from Edmonton in a northerly and westerly direction to the Peace River district. It is a colonization line; a line built so as to enable the country to be opened up, and one at the present time without a self-sustaining traffic. This is the usual experience of lines built for such a purpose, although in the long run such lines have proved of great value to the country.

The company also operates over the Central Canada and the Alberta and Great Waterways Railway. These Railways are of the same character as the Edmonton, Dunvegan and British Columbia.

In settling freight rates after the matter had been carefully considered by Mr. Fisher, the very reasonable and intelligent traffic officer of the Edmonton Board of Trade, they were fixed on the higher mountain scale; but an exception was made in ease of the products of the land, as they, as a matter of fact, were similar in character to the prairie territory and produced like commodities.

Logically, the same principle should be applied to the express rates; but the express scale authorized hereunder in British Columbia, owing to the introduction of the uniform block system, does not materially raise express rates; on the other hand many movements are actually made cheaper. The express company is controlled by the same interests as in control of the railways. The earnings are now divided on the 50-50 basis. The business carried on is small. The gross transportation receipts for 1918 were \$37,028.50 and the loss to the express company amounted to \$2,582.61, and the expenses are increasing. The monthly salary of express messengers paid by this company in 1917 was \$80, it is now \$110.07, an increase approximating 27 per cent, and other increases have been made.

As stated, the express mountain scale cannot relieve the situation. Up to 450 miles the new mountain scale shows increases only to 75 miles, and over 125 miles to 150 miles; for all the other distances the rates have been reduced, the reductions running from 5 cents to as much as 45 cents per 100 pounds. In his letter of the 25th June, Mr. Dowling, the company's general superintendent, shows that although the maximum possible haulage of his combined companies is about 700 miles from Fort MacMurray to Grande Prairie, as a matter of fact over 80 per cent of the express business is in or out of Edmonton, and the movements are all practically within 400 miles. It is clear, therefore, that the application of the new mountain scale would, instead of increasing, seriously reduce the company's revenues.

Edmonton has a peculiar interest in the railways and express company in question, and at the conclusion of the hearing Mr. Fisher was requested to have his Board con-

sider the case of this company and submit the Board's conclusions. The transportation committee of the Board of Trade reported to the Board of Trade as follows:—

"Following instructions of Council to report as to the request of the Central Canada Express Company to the Board of Railway Commissioners to be permitted to submit an application for approval of new tariffs separate from and independent of the application for increased rates submitted by the other express companies operating in Canada; and as to the fairness of the new rates asked for, the committee begs to report as follows:—

1. "It is considered that the company's request for separate treatment and a tariff based on conditions under which it operates, rather than on what is asked for by the other companies, is reasonable and is justified by the fact that it has no long haul business; and that the conditions which justify special treatment regarding freight rates are similarly operative in respect to express traffic.

2. "Your committee is of opinion that the company is entitled to some upward revision of its tariffs in view of the fact that the express rates must bear some recognized relationship to the freight rates, and the freight rates have been materially increased by Order in Council, while the express rates have not changed; and in view of the statements submitted by the company indicating that revenue under present tariff is insufficient to cover the cost of the service.

3. "Your committee could not recommend approval of the proposed new general tariff as submitted to the Board of Railway Commissioners at the hearing of February 26, by the company. After a conference with the general superintendent of the Central Canada Express Company, it was agreed that the present proposed new tariff be withdrawn and a new proposal submitted therefor, such new tariff to be based on rates equal to two and a quarter times the first-class freight rate at present in effect to each point to which the company operates. It is understood, however, that this arrangement is contingent upon some advance in rates being allowed by the Board of Railway Commissioners to the other express companies operating in Canada; and that the revised new proposals of the Central Canada Express Company shall not show a greater average percentage of increase over the rates in its present general tariff than shall be permitted to the other express companies over their present rates.

4. "It is understood that in working out these rates, when two and a quarter times the first-class freight rate yields a figure ending in odd cents or fractions, the express rate shall be the nearest figure ending in 5 or 0.

5. "Your committee finds the company's proposals regarding increased rates for cream very much more reasonable than the proposals of the other companies regarding this traffic. An increase of 50 per cent in these rates is asked for by the company as compared with advances of from 150 to 250 per cent asked for by the other companies. It is recommended that the company be permitted to increase its rates on cream traffic by an average of 50 per cent, provided that an increase of not less than that percentage is permitted by the Board of Railway Commissioners to the other companies; and in no case is the percentage of increase to be greater than is allowed by the Board to the other companies over their present rates on cream traffic.

6. "It is understood that the present proposals for a new cream tariff submitted by the company in its application shall be withdrawn, and there shall be submitted therefor a new tariff showing the same average percentage of increase, but having rates more closely graduated and increasing more in accordance with the respective distance of each shipping point.

7. "It is understood that the foregoing recommendations are made only as a temporary measure and with the understanding that if, and when, there occurs any reduction in freight rates in effect on the railways over which the Central Canada Express Company operates, there shall be a readjustment of express rates."

I would give effect to the action of the Board of Trade as nearly as effect can be given to it, consistent with proper tariff practice and the necessity of a relatively higher basis for the shorter haul of 50 miles, which is accompanied with just as great terminal expenses as the longer haul.

In order to fit into the proposed general block tariff, it is necessary that the company's tariff be broken up into 50-mile blocks. The following table shows in the first rate column the average first-class standard freight rate for each 50-mile block; the second column $2\frac{1}{2}$ times the first-class freight rate, and the third column what I consider the rates might reasonably be in order to produce a proper alignment and more consistent spreads:—

Miles.	cts.	cts.	cts.
50..	34	77	90
100..	64	144	145
150..	86	194	195
200..	103	232	235
250..	120	270	270
300..	135	304	305
350..	153	344	340
400..	170	383	375
450..	183	412	410
500..	198	446	445

The initial 90-cent rate is the same as that reserved in the mountain scale and produces a minimum rate on the graduate table of 30 cents.

In so far as commodity rates are concerned, in view of the general action taken hereunder, the increase of 50 per cent cannot well be allowed. The company is only entitled to charge on the British Columbia scale. This will give the company increases, but not to the same extent. Cream is the important movement. On the basis of the 8-gallon can, the following table shows the rates the company now get and the rates it would now be allowed to charge under the British Columbia tariff, as it would be extended to cover the company's mileage, as shown in its present tariff:—

Miles.	Present. cts.	New. cts.
25..	25	30
50..	31	35
75..	36	40
100..	41	45
150..	51	55
200..	61	65
250..	71	75
300..	81	85
350..	91	95
400..	101	105

The present rates are shown as including delivery. In so far as cartage is concerned, this company is not in a position to increase its wagon service as the larger companies are compelled to under this judgment. On the other hand the company must continue the wagon service that it now gives. The company, however, will be relieved from cartage on the returned empty cans, which are carried at the nominal rate of five cents each, as in the case of other companies.

FREE DELIVERY LIMITS.

The whole matter of delivery limits and of points at which express companies make free collection, is in a very unsatisfactory condition. It is governed by no settled or proper principle. At certain points the companies give a free wagon service. While in general this free wagon service is an additional facility, which has been installed at places where the traffic is the greater, the service nevertheless has been given at some points where the business is comparatively small. Apart from such points it would appear that the wagon service has been put in by the companies having regard to the necessities of their own business. At places where the express turnover is large,

the express companies, in order to prevent congestion resulting from the retention of goods at their offices, of necessity have put in a wagon service. This wagon service, however, at these points is limited, as a rule, either to down town areas or to closely built up residential districts. As a result the situation is that a wagon service is maintained in certain portions of cities and in a comparatively small number of towns, while the majority of places and the residents of the outlying portions of cities are either entirely without a wagon service or only obtain that service on the payment of an additional charge for delivery or collection, as the case may be. This has given rise to complaints; first, from points where no delivery service exists, and second, from cities where the free delivery limits cover only a portion of the municipal area; and as a result complaints are inevitably received from time to time from municipalities on behalf of citizens living in the outlying sections. Complaints on this latter score have been made by practically all the cities that have had a large growth and that have extended areas. Application has been made for increased free delivery areas in a number of places. The following may be instances:—

Bridgewater, N.S.,
Calgary, Alta.
Edmonton, Alta.,
Fort William, Ont.,
Halifax, N.S.,
Hamilton, Ont.,
London, Ont.,
Montreal, Que.,
Ottawa, Ont.,
Outremont, Que.,
Prince Albert, Sask.,

Regina, Sask.,
St. Boniface, Man.,
Saskatoon, Sask.,
Three Rivers, Que.,
Toronto, Ont.,
Trail, B.C.,
Vancouver, B.C.,
Walkerville, Ont.,
Westmount, Que.,
Windsor, Ont.,
Winnipeg, Man.,

The Board in the past has not ordered a wagon service to be installed at any point; but has, from time to time, by Order, enlarged the existing delivery limits when streets have been paved, and the density of population was such as in the opinion of the Board warranted placing the extra cost of the extended service on the express companies. With to-day's prices, the cost of maintaining a wagon service forms a serious item, and by extending this cost, the Board has in effect by increasing the service reduced the companies' earnings and contributed to the present unsatisfactory condition of express companies. No order, however, was made unless the local situation was such as to demand this action. The whole question was gone into at great length in the original inquiry of 1911, and in the course of the Judgment of my predecessor, the Hon. Mr. Justice Mabee says:—

“ However, it may be of no use to pursue the situation as it relates to the past, as the principal endeavour is to obtain the establishment of a fair and proper system both for the public and the carrying companies for the future. Of course, it will be understood that this whole subject regarding delivery limits is confined to such cities and towns as by reason of their local conditions it would seem reasonable to fix delivery limits in. There are innumerable points all over Canada where the companies have no collection and delivery service, and where it would be entirely unreasonable to establish such services so long as no collection and delivery expense forms part of the toll charged. The large majority of points where there are express agents are places where there is no collection or personal delivery, and at such points the established custom is to notify the consignee of the receipt of the package at the particular express office, and requiring him to call within a reasonable time and obtain the same.

“ It is obvious that as to all this class of traffic the part of terminal expenses representing collection and delivery should not form part of the toll charged. In the past the tariffs have not provided for this feature, the same charge being made (1) when there was no collection or delivery service; (2) when there was a collection, but no delivery; (3) where there was a delivery but no collection; (4) where there was both collection and delivery. This sort of tariff has discriminatory features, and the new one must be based upon the services actually

rendered; in other words, that part of the public that does not enjoy the collection and delivery service should not pay tolls that include the expenses of such services.

"The companies have, after conference, arranged to publish directories showing delivery limits in all cities of 10,000 or upwards, and in large towns of less population where there are at present delivery limits. This may be a fair plan to try, but it must be upon the understanding that it is not final, if the general result should be found to be unsatisfactory, and the approval of the delivery limit clauses in the merchandise receipt is subject to the foregoing. Of course, the companies in removing these discriminations must not increase tolls for any service performed by them."

Under this judgment there ought to be three sets of express rates: first, applicable between points where there is no wagon service; second, applicable between points where there is wagon service given either at point of origin or destination; third, service between points each having wagon service.

On going further into the matter, my predecessor found that it was impossible to work out this basis theoretically correct. As a consequence this portion of the judgment was not carried into effect by an appropriate order, but on the contrary orders were issued limiting delivery limits in the larger places, and making no distinction in rates whether the wagon service was or was not given.

A very exhaustive inquiry was held by the Interstate Commerce Commission as to express rates, practices, accounts and revenues subsequent to the decision of this Board in 1911. The judgment of the Interstate Commerce Commission reads as follows:—

"Another fruitful source of dissatisfaction with express carriers has been their neglect or refusal to deliver shipments outside of arbitrarily established free-delivery limits, of which the shipper has had no previous notice or information. In many instances these delivery limits are not named in any publication of the carrier, and appear to be entirely within the control of the whim or inclination of the local agent. The popular conception of express service is that it includes the free delivery of the package at the consignee's address. This conception has been fostered and encouraged by the express companies themselves, so that when a consignee is required either to call for his package or submit to an extra charge for its delivery, complaint and dissatisfaction follow. Therefore, it will be ordered that the express carriers publish a joint general directory, alphabetically arranged by cities, of all express offices in the United States, the name of each office to be followed by a statement as to whether a free-delivery service is maintained at such office or not. Where a free-delivery service is maintained, unless the publication shall circumscribe the delivery limits (as hereinafter illustrated), it shall be understood that the delivery service comprehends the corporate limits of the place named.

"At each of such offices where restricted free-delivery limits have been established, the boundaries of the free-delivery zones should be shown in a condensed and abbreviated form sufficient to give notice to the shipper and consignee of the outline of the limits thereof, by streets, as for instance:

"San Diego, Cal.—Bay ave., from the beach east to 32nd st., north on 32nd st. to Horton ave., west on Horton ave., to City Park, north on Arizona ave., from City Park to Adams ave., west on Adams ave., to city line; west on city line to Ingals st., south on Ingals st., to Vine st., west on Vine st., to the beach."

At each point where delivery is made by local express companies beyond the established delivery limits a foot note should be shown reading as follows:—

NOTE.—Shipments delivered by local express companies to points outside of the defined delivery limits as shown herein will be subject to the additional charge of such local express companies.

The charge for this service is usually—cents per package, but the company does not guarantee delivery at this rate, which is subject to change without notice. Prepayment of such charges may be made by consignee at point of origin, subject to the collection from consignee of any deficiency in the amount so prepaid.

"This directory should be filed with the commission and conform to the express tariff regulations of the commission, subject to such modifications as the commission may find necessary or desirable, and copies should be posted at all express offices in the United States. Copies of this and all similar publications suggested herein should be furnished to all shippers upon payment of a reasonable charge therefor, which charge should not exceed the actual cost of printing such extra copies as may be required to meet the demands of shippers. The carriers have expressed themselves as agreeable to the course herein outlined as to all of the matters heretofore dealt with."

It will be observed as a result in the United States the establishment of the delivery limits and their extent are left entirely in the hands of the express companies; but it is incumbent on the express companies to give full information to shippers as to whether or not free delivery is maintained at point of destination, or, if maintained in part, the extent of the limits.

While the above constitutes the practice in the United States, as settled by the Interstate Commerce Commission, in some of the States commissions have gone further and their practice is practically the same as that obtaining in Canada; that is they have allowed a limited delivery area which on proper cause is extended. The judgment of the Public Service Commission of the State of New York, in the complaint of Frank B. Saunders *vs.* the American Express Company may be referred to. In view of the special circumstances shown in that case the extension of the delivery limits to include the premises of the applicant, who handled considerable business was ordered. The applicants premises were very much nearer the station from which the deliveries were made, or to which collections were taken, than most of the 250 buildings included in the free delivery limits. The special circumstances of that case clearly established the applicant's right.

As already pointed out, the chief complaints come from larger places, and the cases of Montreal and Toronto deserve particular mention. The Montreal limits were fixed by the Board's Order of June 24, 1912. Since that time the area of Montreal has increased very greatly and also its population. These limits have not been since increased. The city's application for an increased delivery area is particularly strong. The free delivery limits at the present time cover but 14 square miles out of the 43 square miles within the city limits; or, in other words, free delivery is confined to 32.5 per cent of the city area. The limits for free delivery were fixed in Toronto by the Board's Order of May 6, 1912. A comparison made in connection with that city's complaint in 1916, showed that the territory included in this free area was 20 miles as compared with the total city territory of 32 miles. In other words the free area in Toronto then fixed represented 62.5 per cent of the total area within the city limits. On the basis of population in the 1916 area the free delivery limits included at that time some 87 per cent of the population of the city of Toronto. As a result of the application of 1916 free delivery limits in the city were further increased by the inclusion of Wychwood, Brackendale, and that territory lying south of Earls court, and St. Clair Avenue. The effect of this was to increase the area included in the free delivery zone to 67.5 per cent of the total area included in the city limits. By reason of letters received from the Citizens' Express and Freight Campaign Committee of Toronto, my attention has been called to a very extraordinary method in which the subject has been treated by that committee. One of the numerous letters received is in part as follows:—

"The people, merchants and business men, in the non-delivery-express-areas in Toronto are becoming extremely impatient at the great delay in getting

express service. It is now several months since your board heard the demand of the people for redress on the service handed out to them by the express companies. We know that patience is a virtue. In this case it is a great virtue. We are being urged very strongly to proceed with our cartoon advertising campaign, the cartoons of which illustrate and hold up to ridicule the conditions this city is compelled to submit to. Now you do not want anything like that."

Another reads in part:—

"Your Board is perhaps aware that last year some dozen or more rate-payers' associations in this city, including the Central Council Rate-Payers' Associations, sent resolutions to Ottawa, asking that the commissioners whose terms expired last year, be not re-appointed.

"We are again being urged by the Rate-Payers' Association to institute another campaign to again send petitions to Ottawa for the appointment of commissioners, who will take more interest in public welfare. What justification is there for taking five months to decide whether one hundred thousand citizens of this city are entitled to express collection and delivery service, and for righting the ridiculous conditions prevailing in East Toronto in connection with express delivery and collection."

The officers of this campaign committee know very well that the determination of the issues herein involve a consideration of the business of the express companies over the whole country. The submissions of the Board of Trade of Winnipeg, a very large transportation centre, were only received June 23.

I did not personally deal with the previous Toronto application, and the judgment was prepared by Mr. Scott, in collaboration with Mr. McLean. On looking up the file I find that instead of this question of delivery being dealt with in the usual and proper manner, it was made the subject of a popular campaign in Toronto. A lot of unnecessary money seems to have been spent in advertising, and display advertisements appeared in the public press claiming, among other things, that 100,000 people in the city of Toronto are suffering while an ungrateful corporation fills its coffers at their expense, and begging citizens to help in the campaign as follows:—

"Our cause is just and reasonable. Will you help us? You can by writing a strong letter to the Railway Board. Write to-day to Mr. A. D. Cartwright, Secretary, Board of Railway Commissioners, Ottawa, and express your opinion or state your grievance. Letters to the Railway Board do not require stamps."

It is of course plain that this campaign could not either improve the financial capacity of the companies to give an extended service or increase the population of the unserved districts, the only material question for consideration.

I also find that a large number of letters have been received by the Board, something about 300, from which it would appear either that the advertising campaign did not work very well, or else that the number of people who really used the express service in the outside limits was not very great, as accepting figures of the advertisements of the campaign committee as correct, 350 communications seem but a small result of an intensified campaign, the expenditure of apparently a large sum of money, and an indignant population of 100,000 citizens. I find also that this letter is perfectly correct in its reference to the resolution. The following resolution was forwarded to the Government (doubtless the one referred to in the letter):—

"That we respectfully request that the Honourable Premier, Sir Robert Borden, do defer the re-appointment of Vice-Chairman D'Arcy Scott and Commissioner S. J. McLean to the Dominion Railway Commission until such time as the present discrimination on express collection and delivery in the city of Toronto is extended to include the entire city limits similar to the condition now existing in the city of Montreal and other Canadian cities."

It may be noted that if Toronto is to be treated the same way as Montreal has been treated on the basis of the resolution, the free delivery limits, instead of being extended to the entire city, would be cut in two. As already stated, the judgment under which the delivery limits in Toronto were extended in 1917 was written by Mr. Scott, and again referring to the file, I find the following letter of date April 4, 1917:—

“I beg to acknowledge receipt of your favour of the 3rd instant, enclosing copy of Order as settled *re* express application. I also desire to take this opportunity of congratulating the assistant vice-chairman on the careful consideration which he gave the Citizens Express & Freight application herein.

“I feel, and I think I express the sentiment of the committee of which I am solicitor, that the assistant vice-chairman has gone a long way in relieving the complaints of the citizens in the then excluded areas and I have advised the committee that as soon as the citizens in other portions can bring sufficient evidence the Board will give their evidence the same consideration as they have in this instance.”

A letter was also received from the president of the Ossington and Oakwood Rate-payers Association, dated April 14, 1917, which after acknowledging receipt of a copy of the Order, continues:—

“The Order your Board of Railway Commissioners has granted is of very great importance and has brought relief to thousands of people. As a member of the Express and Freight Campaign Executive Committee, I can say I am well satisfied.”

It is very difficult to account for the resolution condemning the commissioners who afforded the relief in 1917, then so highly praised. Although personally unaffected by and totally indifferent to the threats that have been made, it is obviously my duty, in the interests of the administration of justice, to call public attention to the methods adopted. Such methods never can succeed.

A court which can be influenced by threats is, as a court, useless. A court which on the one hand either desires praise or fears censure, and is concerned is doing aught but what is the right thing to be done under the given circumstances before it, within its jurisdiction and subject to the law, is worse than no court at all. If railway companies or express companies are to be governed by a display of force, threats or bad temper on the part of those adversely interested, it will not be long before they cease to exist. If force and threats are to influence the decision of the courts they might as well be done away with at once and the ultimate force of a Bolsheviki rule adopted.

The matter is, of course, one which could be handled under the provisions as to contempt. This matter is pending, and any attempt such as is being made to subvert the proper disposition of justice by threat can, of course, be adequately dealt with. I am not very fond, however, of contempt proceedings. If a plain statement of the facts is not sufficient to bring home to those interested the mistake they have made, I do not think that any proceeding for contempt can bring about any really useful purpose. While in an action involving only individual rights, relief might well be refused unless proper apology is made, this is not such a case. The rights of the citizens of Toronto cannot and ought not to be prejudiced by the actions of their perhaps self-constituted representatives no matter how improper or mistaken such actions may be.

In the great majority of municipalities it is recognized that the free delivery limits cannot reasonably be extended to the whole municipal area, as the municipal areas in general include large blocks of vacant land and unpaved streets. In the many applications that have been made, only two asked for complete municipal delivery limits, this demand being made in Toronto and in Montreal. At the hearing in Montreal the application was, however, urged having regard to essential districts rather than municipal limits.

Montreal shippers admitted the correctness of the basic principle of density of population rather than city limits, which often contain property much more valuable for market garden purposes than for urban building lots. In Toronto municipal limits were pressed with much insistence. The argument was there frequently used that as the outlying districts paid taxes in the same manner as the developed sections, there was a discrimination unless delivery was carried to the extreme limits. This undoubtedly would be so if the express companies were interested in or their operations related to the municipal tax. But the municipal tax instead of forming a consideration for an express service, constitutes one of the expenses of express operation. I am of the opinion that the occasion of the increases which the companies will now get is justification for a change in wagon service, and gives an opportunity to have the limits placed on some defined basis, which could not be extended in view of recent express deficits. As already noted, the express companies have given a service at some points where neither business nor density of population appears very great. At these places where the wagon service now exists the service must be continued until otherwise ordered. In so far as applications for the extension of the wagon service are concerned, I would adopt the following rules:—

1. The corporate area shall be mapped into four parts by lines intersecting at right angles at a centrally located point, and based on these lines each such part shall be divided into squares measuring one-quarter mile each way, hereinafter called "blocks."

2. The minimum qualification for free cartage shall be four adjoining blocks, each containing at least 100 families in places with a population of 5,000 or over, and 50 families in places with a population of less than 5,000; except that in places with a population less than 1,000 free cartage may be provided in the discretion of the company.

Industrial plants and business houses shall be initially reckoned as one family of five (or less) regularly employed persons, and each additional five as one family more.

3. From said four primary blocks each successive block conforming to the requirements of rule 2 shall be included in the free cartage area.

4. Any block not conforming to the minimum requirements of Rule 2, but which is bounded on three sides by cartage blocks, or through which the express vehicles necessarily pass, shall be included in the free cartage area.

5. Four or more contiguous blocks conforming to the requirements of Rule 2, but separated from the free cartage area hereinbefore defined by not more than one-quarter mile (air mileage) shall receive the free cartage service.

6. Industries, or business or public institutions, in non-cartage blocks shall receive the free cartage service, provided they are not more than one-quarter mile from the nearest cartage block, and the intervening area shall also be so served.

7. A detour of more than one-quarter mile outside of the free cartage area, in order to use an intervening bridge or vehicular ferry, is not hereby required.

8. Free cartage is not required by these rules beyond the corporate limits, nor within such limits where or when the roads are not reasonably passable by express vehicles.

9. The boundaries of the free cartage area shall be defined by thoroughfares or topographical features nearest or most convenient to the farthest lines produced by these rules.

Free cartage shall also be extended to a thoroughfare beyond but bordering the cartage limit, provided that at least 75 per cent of its lots within a block are occupied, and that convenient cross connections exist; such thoroughfare to become the provisional limit with respect to the next thoroughfare beyond but adjacent to it that complies with the said minimum requirement; and so on until a complete block is formed under rules 1 and 2.

A description of the local free cartage limits shall be posted in the express office at each cartage point and filed with the Board.

10. Should the tariff at any cartage point be so limited as in the judgment of the company not to warrant the expense of furnishing its own vehicles, an independent agency shall be employed by the company at its own expense, and shall be used until and unless the company is able to show to the satisfaction of the Board of Railway Commissioners that the price demanded for such service is unreasonable.

Mr. Hardwell, the Board's Chief Traffic Officer has devoted much study to this plan. With reference to the underlying principle of density of population he says:—

"I should explain the density basis adopted. In a leading article in the *Toronto Globe* of October 17, 1918, on "Plans for Canadian Cities," Mr. Thomas Adams, Town Planning Adviser to the Commission of Conservation, Canada, is quoted as saying that Toronto itself has claimed Mr. Adams' attention, and that allowing for a density of 30 persons to the acre, which would permit of wholesome living conditions, the city has room for a population of 760,000 within its present boundaries. On the basis of five persons to the family used by the *Might Directories* compilers for statistical purposes, this would represent six families per acre.

"I have obtained from the commission Mr. Adams' work on "Rural Planning and Developments," at page 170 of which, referring to the garden city movement in England, and particularly to the acquirement by the Garden City Company of the Letchworth estate in Hertfordshire, he says that not more than twelve houses are permitted to be erected on any one acre. This means at least twelve families.

"As rule 2 divides the town into squares one-quarter mile each way, each square or 'block' represents one-sixteenth of a square mile, and, therefore, forty acres. Although the Letchworth precedent would allow 480 families to the block, Mr. Adams, as quoted by the *Globe*, would allow but 240 as permitting good living conditions. As the proposed plan calls for only 100 families to each block in the larger towns, and 50 in the smaller, these minima cannot possibly be regarded as excessive.

"In rule 4 I have included the whole of an otherwise unqualified block through which the wagons necessarily pass."

The adoption of this plan will be to extend the limits where there is justification for the extension and where business may be carried on without a direct loss under it. Earls court, in Toronto, for example, will receive a service. As a further corollary effect will be given to the application of both the Citizens' Campaign Committee and of the express companies to cancel the Order of 1918, in so far as it provides for an outside pay zone. The only other place where an outside pay zone exists is West St. John: this outside pay zone will also be abolished by the adoption of these rules.

Over and above the question of the limits, themselves, I have always felt that a discrimination existed against shipments to and from points without any wagon service. There are many points, hundreds of them, where there is no wagon service and where the cost of maintaining a wagon service would be entirely disproportionate to the total receipts. Nevertheless these points pay just the same rates as do points where a wagon service exists.

With the greatest deference to the original action taken by the Board, I have come to the conclusion not only that some distinction ought to be made, but that it can be made. The distinction of necessity must be an arbitrary one. All express rates from their nature, are more or less arbitrary. Just as the express allowance is in its nature somewhat arbitrary, so must the cost of wagon service be treated. The costs vary, practically at every point. The cost per shipment at Toronto amounts to some 14 cents on the average. The cost in the outlying districts is a much higher figure, and these costs again vary from month to month, dependent upon the length and character of the cartage haul. They also vary with the cost of stable supplies and with the wage scale. My first idea was to make an arbitrary reduction from the rates of 15 cents per shipment where but one wagon service was performed, and of 30 cents where no wagon service was performed. This, however, would be entirely unworkable. It would mean, taking

the first eastern block with a per 100 pounds rate of 80 cents, that between any two points where no wagon service was maintained, shipments up to four pounds in weight would be carried without any remuneration whatever, as the 30-cent minimum is reached with the 4 pounds lot. Under the same scale, if this plan were adopted, shipments up to fourteen pounds between such points would be carried for the ridiculous remuneration of five cents. A shipment of 40 pounds would return but 20 cents. The proper relationship to the freight charge would be destroyed. The matter, however, can be dealt with so far as to make some real difference in express earnings by making these reductions under the principles of the graduate scale. This would work out in the following manner:—

Where no wagon service is given at all, taking shipments which would ordinarily move on the \$1.10 scale, the rate per 100 pounds would become, instead of \$1.10, 80 cents; a 70-pound shipment would drop from 85 cents to 65 cents; a 45-pound shipment would drop from 65 to 55 cents; a 10-pound shipment would drop from 40 cents to 35 cents, and a 4-pound shipment would drop from 35 cents to 30 cents.

Where but a single wagon service is given, again taking shipments which would move ordinarily on the \$1.10 scale, the rate per 100 pounds would become, instead of \$1.10, 95 cents and the lesser shipments would be graduated as under the 95-cent rate.

As a further result of the adoption of this principle, the proposed graduate table, which is only expressed under multiples of ten, will have to be added to in order to provide for the reduction of 15 cents which will apply to but one wagon service, and must, therefore, be expressed in multiples of five. Strong objection was raised in the West to the absence of the five-cent multiple in the graduate table. The addition which will now be necessary answers these objections.

A revision of the Express Classification must be made to conform with the changes ordered hereunder.

OTTAWA, July 17, 1919.

The Deputy Chief Commissioner and Commissioners McLean, Rutherford, Boyce, and Goodeve, concurred.

GENERAL ORDER No. 268.

In the matter of the application of the Express Traffic Association on behalf of the express companies within the legislative authority of the Parliament of Canada, for a general increase in rates; also the applications of the cities of Montreal, Toronto, Winnipeg, Lachine, London, Walkerville, Ottawa, Vancouver, Regina, Fort William, Prince Albert, and Halifax, the University of Saskatoon, residents of Outremont, and the Exhibition Association, Limited, of Edmonton, for increased free collection and delivery areas; the applications of the village of Bancroft, Ont., and the town of Bridgewater, Nova Scotia, for the establishment of a free delivery service; and the application of the express companies for restricted collection and delivery limits in the city of Quebec.

File No. 29040.

FRIDAY, the 25th day of July, A.D. 1919.

Sir HENRY L. DRAYTON, *Chief Commissioner.*

HON. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the applications at the sittings of the Board held at Ottawa, Toronto, Montreal, Vancouver, Victoria, Nelson, Vernon, Lethbridge, Calgary, Edmonton, Sas-

katoon, Regina, Winnipeg, Fort William, Sudbury, and Moncton, on the 7th, 8th, 18th, and 24th days of January and the 19th day of March, 1919, the 13th day of January and the 5th day of February, 1919, the 16th day of January, 1919, the 14th day of February, 1919, the 17th day of February, 1919, the 21st day of February, 1919, the 19th day of February, 1919, the 24th day of February, 1919, the 25th day of February, 1919, the 26th day of February, 1919, the 28th day of February, 1919, the 1st day of March, 1919, the 3rd day of March, 1919, the 5th day of March, 1919, the 7th day of March, 1919, and the 24th day of March, 1919, respectively, in the presence of counsel for and representatives of the Express Traffic Association, the Canadian Express Company, the Dominion Express Company, members of the Boards of Trade of the cities of Ottawa, Toronto, Montreal, Vancouver, Lethbridge, Calgary, Edmonton, Saskatoon, Regina, Winnipeg, Charlottetown, and Summerside, the towns of Yorkton and Kenora, the Canadian Manufacturers' Association, the National Dairy Council, the Ottawa Wholesale Fruit Shippers, the Montreal Chamber of Commerce, the Montreal Produce Merchants Association, the Canadian Fish Association, the Canadian Fish and Cold Storage Company, the Department of Fisheries, the Canada Food Board, the International Harvester Company, the Marconi Wireless Telegraph Company, the British Columbia Fruit Growers Association, the Wholesale Fish Dealers Association of British Columbia, the Canadian Fish Company, the greenhouse industry, the Commissioner of Fisheries for the Government of the Province of British Columbia, the Gordon Head Company of Victoria, the Hatzic Fruit Growers Association, the British Columbia Growers, Limited, the Kootenay District Fruit Growers, the Department of Agriculture for the Province of British Columbia, the Northern Okanagan Creamery Association, the Salmon Arm Farmers Exchange, the Kootenay Lake Farmers Institute, the Arrow Lake Farmers Institute, the Crystal Dairy of Lethbridge, the milk and cream shippers of Calgary, the Swift Canadian Company, the United Farmers of Alberta, the Saskatoon Pure Milk Company, the Saskatoon Brewing Company, the retail Merchants Association of Saskatchewan, the Saskatchewan Co-operative Creameries, the Western Canada Dairymen's Association, the Regina bread shippers, the Steele Briggs Seed Company, the Vipond Fruit Company, the Crescent Dairy Company, the Milwood Cream Producers, and the Belmont Cream Producers, other shippers appearing in person, the evidence adduced, and what was alleged; and upon reading the written submissions filed, judgment, dated July 17, 1919, was delivered by the Chief Commissioner and concurred in by the members of the Board, copy of said judgment being attached hereto,—

It is Ordered: That, subject to the terms of the said judgment of July 17, 1919, which is hereby made part of this Order, the tariffs issued under the authority of and in conformity with the judgment be, and they are hereby, required to be published and filed at least five days previous to the date on which they are to become effective.

And it is further Ordered: That the express freight collection and delivery plan outlined in the judgment be given effect to, and charts of the boundaries thereunder be posted for the information of the public, with the least delay consistent with the ascertainment by the companies of the necessary data and the acquirement of any necessary additional equipment.

W. B. NANTEL,
Deputy Chief Commissioner.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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No. 10

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In the matter of applications made by the Quebec, Montreal and Southern Railway Company, to withdraw their regular agents from stations at St. Roch, Becquets, St. Louis, St. Judes, St. Barnabe South, St. Damase, Rougemont, Ste. Angele, Mt. Johnson, Sabrevois, Henryville and Clarenceville.

Files Nos. 4205-179, 4205-181, 4205-182, 4205-183,
4205-184, 4205-201, 4205-202, 4205-203, 4205-
204, 4205-205, 4205-206 and 4205-207.

JUDGMENT.

THE CHIEF COMMISSIONER:

The above applications were heard at the sittings of the Board held in Montreal, June 30, judgment being reserved.

The company's applications are justified by the company on the grounds that the above stations are not remunerative and do not yield a sufficient return to support a regular agency station. The company further points out that as a result of the McAdoo award, the cost of maintaining these stations is greatly increased.

Out of twelve stations involved, ten are on the line from Sorel to Noyan junction. This line has a mileage of 86 miles, and the applications, if granted, would leave St. Aime, at mileage 13-28, St. Hyacinthe, at mileage 36-49, and Iberville junction at mileage 64-25, the only stations at which an agent would be left. I am free to admit that the company's operations are in a most unsatisfactory condition. Their earnings are insufficient; but to close ten out of a total of thirteen agency stations in this mileage, would occasion altogether too great a dislocation of business. This action would be entirely too radical. After making careful study of the situation, I am of the opinion that the application must be refused as to St. Judes, Rougemont, Ste. Angele and Henryville. I would refuse the application of St. Judes owing to the present conditions of the line and the necessities of operation. St. Judes is but a short distance from the bridge over the Sailvail river. This bridge has failed, its reconstruction is not yet finished. Train operation has to be broken and this broken train operation is, at the present, controlled by the agent at St. Judes. So far as Rougemont is concerned, the nature of the traffic at this station, the proportional large amount of perishables handled, constitute a public interest of sufficient importance to receive careful consideration. The agent at Rougemont not only looks after shipments from Rougemont, but from Caroline, both comparatively large producers of perishable freight. As this freight is largely destined to points beyond the company's line, I would require

the retention of the regular agent. Ste. Angele, the reason why I say that agent must be retained at this point is that this station is a joint station with the Central Vermont. The agent's remuneration is contributed to by the Central Vermont under an agreement between the companies, and he ought to be retained. The agent at Henryville I would now retain, largely owing to the fact that the stations on both sides are non-agency stations and as I now understand the situation, the mileage from Iberville junction to Noyan requires the retention of one intermediate station agent. Furthermore, the earnings at this station are much more satisfactory than in other instances. The other two stations that the company seeks to close, are, St. Roch and Becquets. These stations are on the main line. The earnings while not very great are much more satisfactory than at the branch-line stations. Becquets is doing a better business than St. Roch. Such a business that would appear to amply warrant the retention of the agent, and while St. Roch is not so satisfactory at the present, at any rate I would retain the agent. As a result, the company's application for leave to remove station agents from St. Roch, Becquets, St. Judes, Rougemont, Ste. Angele and Henryville, will be dismissed, and the applications for leave to dispense with agents at St. Louis, St. Barnabe South, St. Damase, Mt. Johnson, Sabrevois and Clarenceville, granted.

OTTAWA, July 10, 1919.

The Deputy Chief Commissioner and Commissioner McLean concurred.

ORDER No. 28509.

In the matter of the application of the Grand Trunk Railway Company of Canada, hereinafter called the "applicant company," under section 258 of the Railway Act, for approval of plan No. 7810, dated Montreal, May 12, 1919, of the applicant company's proposed new station at Mille Roches, in the province of Ontario.

File No. 5769-97.

TUESDAY, the 8th day of July, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what has been filed in support of the application, and the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the said plan No. 7810, dated Montreal, May 12, 1919, of the applicant company's proposed new station at Mille Roches, in the province of Ontario, directed to be constructed by the Order of the Board No. 28226, dated April 10, 1919, on file with the Board under file No. 5769-97, be, and it is hereby, approved.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28529.

In the matter of the application of the Esquimalt and Nanaimo Railway Company, hereinafter called the "applicant company," under section 314 of the Railway Act, as amended by section 11 of the Acts 7-8 Edward VII, chapter 61, for approval of by-law No. 63, passed at a meeting of the board of directors of the applicant company held at the office of the vice-president in Vancouver, on the 13th day of June, 1919, authorizing the assistant freight traffic manager of the applicant company from time to time to prepare and issue tariffs of the tolls to be charged, as provided by the Railway Act and amendments thereto, for the carriage of freight traffic upon the railway and vessels owned or operated by the applicant company, and any portion thereof, and the passenger traffic manager and the district passenger agent, in like manner to prepare and issue tariffs of the tolls to be charged, as above provided, for the carriage of passenger traffic upon the said railway and any portion thereof and upon the said vessels.

Case No. 3324.

FRIDAY, the 11th day of July, A.D. 1919.

SIR HENRY L. DRAYTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the said by-law be, and it is hereby approved.

2. That the Orders of the Board Nos. 5126 and 25641, dated, respectively, August 5, 1908, and November 16, 1916, be, and they are hereby rescinded.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28523.

In the matter of the application of the LeRoss Grain Growers' Association, No. 273, in the Province of Saskatchewan, for an Order directing the Grand Trunk Pacific Railway Company to appoint a station agent at LeRoss.

File No. 16718.

SATURDAY, the 12th day of July, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*
A. S. GOODEVE, *Commissioner.*
J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon reading what is filed in support of the application, and on behalf of the Grand Trunk Pacific Railway Company, the reports of an Inspector of the Board, and the report and recommendation of its Chief Operating Officer,—

It is ordered: That the Grand Trunk Pacific Railway Company be, and it is hereby directed forthwith to appoint a caretaker at LeRoss, in the province of Saskatchewan, to keep the station clean, and, when necessary, heated and lighted for the accommodation of passengers on the arrival and departure of trains, and to care for less than carload freight and express matter.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28526.

In the matter of the application of the Kettle Valley Railway Company, hereinafter called the "applicant company," under section 261 of the Railway Act, for authority to open for the carriage of traffic the extension of the applicant company's North Fort branch from the old mileage 19, on the line from Grand Forks to Franklin Camp, to a point 1.3 miles farther north.

File No. 11738-137.

SATURDAY, the 12th day of July, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

It is ordered: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic the extension of the applicant company's North Fort branch from the old mileage 19, on the line from Grand Forks to Franklin Camp, to mileage 20.3.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28537.

In the matter of the complaint of the Chicoutimi Pulp Company, hereinafter called the "complainant," (a) that the tariffs of the Canadian Northern Railway Company on wood-pulp from Chicoutimi and Val Jalbert, Quebec, to points in the United States, known as Central Freight Association territory, are 6 cents per 100 pounds higher than those from Hawkesbury, Ontario, instead of 5 cents as formerly, and (b) that the rates on wood-pulp from Hawkesbury to points in Central Freight Association territory are half a cent per 100 pounds higher than the rates prescribed by the Order of the Board No. 26547, dated September 20, 1917.

File No. 26901-10.

SATURDAY, the 12th day of July, 1919.

SIR HENRY L. DRAYTON, K.C., *Chief Commissioner.*
Hon. W. B. NANTEL, *Deputy Chief Commissioner.*
S. J. McLEAN, *Commissioner.*
A. S. GOODEVE, *Commissioner.*
J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the matter at the sittings of the Board held at Ottawa on the 8th day of July, 1919, in the presence of counsel for the Canadian National Railways, and counsel and representatives for the Grand Trunk and Canadian Pacific Railway companies, the complainant, the Montreal Board of Trade, the New York Central Railroad Company, and the Riordan Pulp and Paper Company being represented at the hearing, and what was alleged,—

It is ordered: That the complaint be, and it is hereby, dismissed.

H. L. DRAYTON,
Chief Commissioner.

AUG 9 1919

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Complaint of Messrs. Kilgour Manufacturing Company, Hamilton, Ont., in connection with bills presented by the Grand Trunk Railway Company for car rental which accrued owing to the original charges on the car being held in dispute with the railway company and unpaid by the consignee.

File 1700.212.

JUDGMENT.

COMMISSIONER GODEVE:

This matter was heard at Toronto, June 24, 1918. The complainant is a manufacturer of packing cases and paper boxes at Hamilton, Ont. The period covered by the matter in dispute is from January 1, 1917, to the middle of July following. The essence of the dispute is as to who was responsible for the cause which led to the charging of demurrage complained against.

The complainant argued that the delay was due to two causes, for both of which the railway company were responsible: (1) the delay of the cars in transit which led to the bunching of the cars at point of destination so that they were unable to take care of them with the facilities at their disposal; (2) the failure of the railway company to promptly switch their private siding from time to time as their necessities required.

The capacity of their siding is two-car, and they claimed that they were entitled to a daily switch. They cited a number of days during the period under review commencing in January in which they did not receive any switch, being a total for the six months of some forty-three days in all. They argued that the result of this failure to switch promptly meant not only the forty-three days of 2 cars each, making a total of 86 cars that were delayed, but that the failure to switch each day had a pyramidal effect, so that it resulted in an accumulation of cars in the yard and consequent subsequent delays that would not have occurred had these cars been switched regularly from day to day, or had all the cars ordered arrived promptly on time.

The railway company dispute these statements pointing out, first, that complainant ordered more cars from a number of different points than his capacity would enable him to take care of; and while they admitted that owing to inclement weather conditions and the difficulty of obtaining cars and shortage of engine power during this period, at times there were delays in the arrival of certain cars; that allowance had been made for all delays that could properly be attributed to this source.

With regard to the claim for delay in placing the cars upon complainants' siding, the railway company cite a number of cases in which it was impossible for them to make the daily shunt due to the fact that cars still under load were on complainants' siding. This was admitted by complainant and the reason given by him for delay in unloading at p. 2498, vol. 285, of notes of evidence was that it was difficult for him to keep his organization together while waiting for cars; that if one gang did not have cars to unload they would quit.

The railway company pointed out that while complainant claimed there were four days in January on which there were no shunts, that no charge was made during that month and that they were all square on the 31st day of January. So that in their opinion the failure to make the shunt every day did not have the effect claimed by complainant. At p. 2496, vol. 285 of the evidence:—

“Mr. COLLINS: Take February 9, there is no claim for switching on that day. I find from Mr. Kilgour's figures that on February 7, car No. 75188 was not unloaded, in fact it was not unloaded until the 10th at three o'clock, which was a Saturday. That car was not released until the 14th. Mr. Kilgour claims that there was no switching on the 12th. Car No. 24163 was on the siding and was released on the 15th.

“Mr. KILGOUR: We were not entitled to a switch that day; we had one car to unload. The car was half full. It was standing with one empty car and one loaded car.”

A number of other similar cases were cited.

At the hearing the Chief Commissioner asked Mr. Kilgour, the complainant, and Mr. Morrison, his bookkeeper, who appeared on his behalf, a number of questions with a view to obtaining the conditions in connection with the particular days on which they complained they had received no shunt, but was unable to procure the necessary information. He therefore directed that the Canadian Car Service Bureau “put in a statement showing the number of actual days delay in unloading cars from switch to siding.” He also directed complainant “to put in a statement leaving out the month of January but giving the days in February on which there were no shunts the number of cars on hand on the siding, and follow it up until the end of the month and see how it works out.”

In accordance with these directions the Canadian Car Service Bureau put in a statement under date of August 26th which they stated, covered all the cars involved in the complaint. A copy of this statement was furnished the complainants. The latter were asked for any comments they might desire to make in connection with this statement and on September 7th filed a letter in which it was pointed out that out of the 23 cars shown in this statement to have been held more than two days free time after actual placing on their siding there were 3 cars, in one of which a Sunday had not been allowed for, and the other two of which a Sunday and legal holiday had not been allowed for, leaving only 20 cars in all on which car rental should have accrued, and out of these 20 cars demurrage was only assessed on 12, the balance not having been assessed, as the delay was due to the inclemency of the weather, giving a total of only \$12 as having so accrued.

In this argument complainant has taken no notice of the constructive placement of these cars as shown in the statement submitted by the Canadian Car Service Bureau, and upon which they are entitled to claim demurrage under the Car Service Rules.

I find, however, that it is impossible to make any use of the statement submitted by the Canadian Car Demurrage Bureau in arriving at a just decision, because the amounts assessed do not correspond with the amounts that they would be entitled to according to the dates given in this statement, and under the Car Service Rules.

In addition to this, reductions have been allowed ranging all the way from \$1 to \$44 on the amounts assessed. No reasons are given for the deductions so made.

I further find that the amount said to have been collected under this statement makes a total of \$684, while in complainants' letter they claim to have paid \$715; and in the original complaint they state the amount claimed by the Company to be \$1,200.

Before the hearing a copy of the complaint was served on Mr. Collins of the Canadian Car Service Bureau, and he filed his reply under date of March 19, enclosing therewith a letter from their Chief Inspector, Mr. Letch, dated March 2, 1918. I quote as follows from this letter:—

"I went into this matter thoroughly with Mr. Kilgour personally and allowed him every dollar which his records, instead of those of the railway, showed to be due, even going so far as to allow him a full day's demurrage on cars on hand on dates he claimed his siding was not switched, although in some cases it was evident from his records that only part of a day's delay occurred to one car and that during that time his siding, which is a two-car siding, had at least one car in same under load.

"On the particular car which was 88 days in transit, of which he makes mention in his letter to the Board, the full amount was allowed.

"The final amount found to be due after all allowances were made, was \$515, and Mr. Kilgour handed me his cheque in favour of the G.T.R. for this amount after a great deal of protest."

After receipt of this letter the Board instructed its Inspector Clarke to go to Hamilton and in company with the Bureau's Chief Inspector make a joint check of the records of the cars in question. Inspector Clarke went to Hamilton on Wednesday, May 22, accompanied by Mr. A. J. Letch, Chief Inspector of the Canadian Car Service Bureau, and met Mr. Kilgour, one of the complainants, where he made an additional check of the detention and demurrage charges to which the Kilgour Manufacturing Company has taken exception, submitting his report to the Board under date of May 23, 1918. At p. 3 of that report the following occurs:—

"I am also of the opinion that the Kilgour Manufacturing Company's business has increased considerably beyond the capacity of his two-car siding, and if the siding is not switched promptly each day, then there is generally a congestion or an accumulation of cars.

"After my inquiry and interview with Mr. Kilgour, I am of the opinion that Mr. Letch, Chief Inspector, Canadian Car Service Bureau, has dealt as fairly as possible with the manufacturing concern, considering the condition of the small siding, the amount of business handled, the severe weather conditions during the past winter, and all other railway drawbacks."

Inspector Clarke's last paragraph refers to the settlement made with Mr. Kilgour by Mr. Letch for the sum of \$515 as above quoted.

The evidence given at the hearing and on file would seem to bear out the conclusion arrived at by the Board's Inspector. While a part of the delay was undoubtedly due to the delay of the cars in transit and to the failure of the railway company on every occasion to promptly switch Mr. Kilgour's siding when vacant, on the other hand it is equally clear from the evidence that a part of the responsibility was due to the complainant ordering more cars than their capacity enabled them to take care of promptly, and also to their delay in the unloading of cars after placement.

I do not think sufficient facts have been submitted by complainants as would justify the Board in granting the relief asked for.

OTTAWA, September 13, 1918.

The Chief Commissioner concurred.

ORDER No. 28621.

In the matter of the complaint of the Kilgour Manufacturing Company, of Hamilton, Ontario, hereinafter called the "Complainant," against a belated bill of demurrage amounting to \$1,200, subsequently reduced to \$515, on 101 cars of lumber received at Hamilton from various points during January to July, inclusive, 1917:

File No. 1700.212.

FRIDAY, the 1st day of August, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Toronto, June 24, 1918, the Complainant, the Canadian Manufacturers' Association, the Canadian Pacific Railway Company, and the Canadian Car Service Bureau being represented at the hearing, and what was alleged—

It is ordered that the complaint be, and it is hereby, dismissed.

A. S. GOODEVE,
Commissioner.

JOINT-CLASS TARIFFS.

Report of Chief Traffic Officer of the Board.

Files 27256.1, 27450, 26039, 6713.140 and Case 1871 (pt.3),

Since everything likely to be of value appears to have been submitted, I think this old question should be disposed of.

It is perhaps unnecessary to review the various stages prior to the filing of Grand Trunk (C.R.C. No. E. 3842) and Can. Pac. (C.R.C. No. E. 3439) Tariff of Joint Mileage Class Rates to apply on interline traffic between themselves, to become effective May 1, 1918. This tariff having been objected to, it was suspended by Order 27160, dated April 26, 1918, following a hearing at Ottawa on the 16th April. The last hearing was held at Ottawa on the 7th May, 1918. On the 25th September the tariff was withdrawn and cancelled, Order in Council P.C. 1863 having issued in the meantime, and none has been substituted.

The Grand Trunk had and still has a joint tariff to and from points on the Central Ontario Ry. (now part of the Canadian National) via Trenton, but the rates are claimed by Dominion Cannerys to be excessive and restrictive of trade. It appears, generally speaking, to be a little higher than the tariff first referred to, the basis of which may be explained as follows:—

Taking the old standard tariff in effect before the *Fifteen Per Cent Case*, representing, of course, single-line movements, the general rates for the same mileage blocks were made by adding 4 cents per 100 pounds to the 1st class rates up to 110 miles; for the blocks over 110 to 220 miles 2 cents was added to the 1st class rates; and for all distances beyond 220 miles the single line standard rates was adopted as the joint rates for like mileages. To the 1st class joint rates so arrived at 15 per cent was added so as to bring the schedule in line with the judgment in the *Fifteen Per Cent Case*. Then the rates for classes 2 to 10 were graduated from those first class rates in conformity with the scaling of the standard tariff.

Of course, had this tariff been permitted to go into force, or if it were now resubmitted on the same plan, it would now include the further 25 per cent increase.

These were the rates for haulage only; an additional charge of 4 cents per 100 pounds to cover cost of transfer of l.c.l freight from one line to the other being provided for.

The greatest objection to this tariff was that it had as its general basis the maximum or standard eastern scale which, in practice, is applied to only a small proportion of the traffic moving under the Classification ratings. The great bulk of such traffic is directed from or to the manufacturing and jobbing centres, and is subject in the east to the lower scale of what is known as Schedule "A." It is to this schedule that the joint tariffs should be related, in my opinion, if they are to be of any practical service. Two points have, however, to be kept in view. Both the standard tariff and Schedule "A" are one company's scales, and the Board has had frequent occasion to rule that they cannot be applied as of right to joint hauls. The other point is that while physical connection exists at the points of transfer of the suggested tariff, thus enabling the interchange of carload traffic without handling, on the other hand, at several of them l.c.l. shipments have to be transshipped and teamed. Cartage cost varies even in the case of the big cartage corporations with which the railway companies have contracts. The present rates, regardless of classification, of those cartage companies, are 6 cents per 100 pounds at Montreal, 5 cents at Toronto, $4\frac{1}{2}$ cents at Windsor and Walkerville, and 4 cents at the other cartage points. Some of the interchange points shown in the tariff referred to are such cartage points; at the others the companies must rely on the best terms they can make with local carters.

Careful consideration has decided me to recommend that within the territory covered by the Order of the Board No. 3258, dated July 6, 1907, as amended, in what is known as the International Rates Case, and in conformity with the relevant provisions thereof, also with the station groupings of the respective companies as shown in their tariffs between points west of Toronto on the one hand and points east of Toronto on the other, joint tariffs of class rates be compiled to apply between stations on the C.P.R. and G.T.R., the C.P.R. and C.N.R., and the G.T.R. and C.N.R., respectively, on the basis of the so-called Schedule "A" scale, with the addition of the following figures to be incorporated in the rates themselves:—

1	2	3	4	5	6	7	8	9	10	classes,
—	—	—	—	—	—	—	—	—	—	—
8	7	6	4	$2\frac{1}{2}$	$2\frac{1}{2}$	$2\frac{1}{2}$	$2\frac{1}{2}$	$2\frac{1}{2}$	$2\frac{1}{2}$	cents per 100 pounds,

the rates so compiled to include the service of transfer from the one company to the other; subject, however, to a minimum joint charge of 100 pounds at the first-class rate, but not less than 75 cents.

It is not my purpose that these additional figures should be understood to represent merely an approximation to the average cost of transferring the freight; they are intended to include that, and as well, some addition to Schedule "A" because of its application to a joint service. The unfairness of applying the tapering rate of the extending mileage of a single carrier to the same aggregate mileage but shorter individual hauls of two carriers will not be overlooked. In the sum total the railways may come out ahead of the transfer costs; but on the other hand, the Board will not be committed to the principle of single line rates for a two-line service.

The companies' proposition provided ten transfer points, as follows:—

Lennoxville, Montreal, Ottawa, Brockville, Peterboro, Toronto, London, Mount Forest, Orillia, and North Bay.

These do not sufficiently cover the field, and my proposal to add the following ten more, making two facing pages instead of a single page of the tariff, is satisfactory to the companies:—

Actonvale, Ste. Rosalie, Renfrew, Kingston, Milton, Guelph, Woodstock, Tillsonburg, Inglewood, Essa (Utopia).

As the work of compilation will take some time during the vacation season, I think October 1, might reasonably be named as the effective date, if these recommendations are approved.

the rates so compiled to include the service of transfer from the one company to the other; subject, however, to a minimum joint charge of 100 pounds at the 1st class rate, but not less than 75 cents.

2. That the joint class freight tariffs carrying out the requirements of this Order be published and filed so as to become effective not later than October 1st, 1919.

3. That the following be made the points of interchange of interline freight traffic between the said Companies under the terms of this Order:—

Lennoxville, Montreal, Ottawa, Brockville, Peterborough, Toronto, London, Mount Forest, Orillia, North Bay, Actonvale, Ste. Rosalie, Renfrew, Kingston, Milton, Guelph, Woodstock, Tillsonburg, Inglewood, and Essa (Utopia).

H. L. DRAYTON,
Chief Commissioner.

Application of the Temiscouata Railway for permission to increase its Standard passenger fare to four cents per mile; also complaint of Municipality of Ste. Rose du Dégèle, P. Que., against the cancellation of second-class fares by the Temiscouata Railway.

File 1010.3.

JUDGMENT.

MR. COMMISSIONER MCLEAN:

Application is made by the Temiscouata Railway for permission to increase its standard first-class passenger fares from 3.45 cents to 4 cents per mile. Prior to the increase in the *Fifteen Per Cent Case*, the standard passenger fare was 3.3 cents. When the increase in the *Fifteen Per Cent Case* was made, the increase was limited to 3.45 cents, being 15 per cent on a 3-cent standard base. This allowed an increase of 3 per cent over the standard fare hitherto charged. Had the full 15 per cent on the 3.3 cent rate been allowed, it would have given a rate of 3.82 cents.

Complaint was also made of the railway having taken out its second-class fares on its main line. This was effective June 16th, 1919. No application for suspension was received.

The railway was instructed to serve a copy of its application on the various municipalities affected. The following municipalities were served: Fraserville, Cabano, St. Louis du Ha Ha, Notre Dame du Lac, St. Modeste, Ste. Rose du Dégèle, Edmundston, St. Hilaire, St. Honoré, Clair and Ledges. Prior to the hearing, replies had been received as follows: Edmundston, stated it had no objection. The municipalities of Cabano, Notre Dame du Lac, Clair and Ledges objected to the proposed 4-cent fare. The Municipality of Ste. Rose du Dégèle filed an objection as to the second-class fares. A telegraphic protest regarding the second-class fare was received, on the eve of the hearing, from the Secretary-Treasurer of the Municipality of Notre Dame du Lac.

At the hearing, various protests regarding the service rendered were made. As explained prior to the hearing, as well as in the course of the hearing, this is a matter distinct from the one of rates and had been the subject of a special report by an Inspector of the Board. At the same time, an opportunity was given those present to file these protests.

While notice in regard to these complaints had not been served on the railway, the matters were discussed and explained at the hearing. Complaint was made as to the express service between Edmundston and St. Hilaire, it being stated that a parcel was taken beyond to Clair. It was explained that this was a matter falling within the operations of the Dominion Express which operates over the Temiscouata. Complaint was made of an extra charge for tickets purchased on the train. It was stated by the railway that if the agent was not at the station there was no additional charge.

Complaint was made as to the limitations in connection with passenger travel on the caboose of freight trains. It was explained that the release which has to be signed was a standard form approved by the Board's Orders, and a satisfactory explanation was given as to the limitation in case of women desiring to travel, it being at the same time stated that in cases of sickness rendering it urgent to travel on a caboose the matter could be arranged.

Various complaints of freight delays were made. An intimation was given by Mr. Stewart, for the railway, that if such matters were taken up with him they would be at once gone into. He pointed out that the instances of this nature, cited at the hearing, as well as complaints as to the nature of the service performed by the agents at various points, had been brought to his attention at the hearing for the first time.

The complaint as to the station at Ste. Rose du Dégèle being closed too early, which was referred to by the Mayor of that Municipality was explained by Mr. Stewart to be due to the closing at 5 o'clock contingent upon the adoption of the eight-hour day.

The question of the lack of connection at Rivière du Loup with the Canadian National for travel from St. John, N.B., via the Canadian Pacific and Temiscouata was raised by Mr. Michaud, M.P. In reply, it was stated that to hold the train so as to make through connection would necessitate the following additional items of expense:

Overtime	\$1,500 per year.
Overtime for enginemen, amounting to \$15 per day	4,700 "

As against this additional expense of \$6,200, it was testified that in April, which might be taken as a characteristic month, the Canadian Pacific issued to the Temiscouata 20 tickets, from which the railway received \$2.80 in each case. On the yearly basis, this would mean a revenue of \$672.00 against an increased cost of \$6,200.00.

The physical operating conditions of the Temiscouata Railway were considered by the Board in *Eastern Townships Lumber Company v. Temiscouata Ry. Co.*, 16 *Can. Ry. Cas.*, at p. 260. In the present application, the following detail was given by the railway:

"Grades and Curvature of the Railway.

The portion of the line in the Province of Quebec lays through a rolling and difficult country; commencing at Rivière du Loup, Que., the line ascends for a distance of 24 miles to the summit between the waters of the St. John and St. Lawrence Rivers; in this 24 miles an ascent of 1003.7 feet is made, being an average grade of 42 feet per mile; leaving the summit at mileage 24 a descent of 775.7 feet is made in the next 19 miles, which is an average of over 40 feet to the mile. Out of 113 miles, there are accordingly 43 miles of heavy grades, 2 per cent being encountered in many places, and on this section there are few tangents, a succession of curves from 4 to 7½ degrees being the ruling alignment. Under these conditions, the line may be compared to the Mountain Divisions of the lines west of Calgary, the grades of the Temiscouata Railway, in fact being virtually heavier than one of the Mountain Divisions."

In some of the submissions made, the opinion was expressed that the nature of the business done and the profit obtained were such as to obviate any necessity of increase. If these allegations are correct, the application would of necessity fail. They must be tested by the actual returns.

To take a pre-war year as a starting point, it appears that between 1913 and 1919 while gross revenue increased 41 per cent, expenses increased 77 per cent. In terms of absolute figures, the increase in gross in the period in question was \$108,801.00 while the increase in expenses was \$142,728.00. This is mirrored in the net revenue. While in 1919 the gross operating revenue was 41 per cent greater than in 1913, the net operating revenue was barely 50 per cent of what it was in the earlier year.

The following summary will illustrate the steady upward movement of expense:

Year Ended. June 30.	Revenue.	Expenses.	Net Revenue.	Percent of Expenses to Revenue.
1913..	\$251,662 39	\$184,422 15	\$67,240 24	73.28
1914..	272,079 17	206,688 64	65,390 53	75.96
1915..	221,109 98	181,872 18	39,237 80	82.25
1916..	222,872 15	180,450 49	42,421 66	80.96
1917..	226,817 76	202,240 72	24,577 04	89.17
1918..	300,961 11	252,117 38	48,843 73	83.77
1919..	360,463 92	327,150 38	33,313 54	90.75

There is not at present available for the year ending June, 1919, the same full details as are available for 1918 in the sworn returns of the railway to the Department of Railways and Canals. It must be remembered that in the year 1918 the sharp increase in wages, later referred to, had not been manifested.

The figures for 1918 show the following capital liabilities worked out on a mileage basis:

Stock..	\$ 8,620 per mile.
Consolidated mortgage bonds and prior lien bonds.. . . .	31,281 "
	<hr/>
	\$39,901 "

No dividends have ever been earned or paid on share capital; so for purposes of measuring the earning power of the line and charges against such earning power, the item of \$8,620 per mile may be omitted.

To understand the situation as it exists to-day, there must be considered all the debt outstanding whether the railway has met charges thereon or not.

There are outstanding \$2,856,333.88 of 5 per cent Consolidated Mortgage Income bonds and \$243,333.33 of 5 per cent Prior Lien bonds. The legislation of 1914, 4 Ed. VII, Chap. 129, which makes provision for the Prior Lien Bonds and the Consolidated Mortgage Bonds may be referred to. The situation in respect of these securities is as follows:—

Dividends on Consolidated Mortgage Income Bonds have been paid as follows:—

For years ended June 30, 1909, 1910, 1911 and 1912....	1 per cent.
For years ended June 30, 1913 and 1914.....	1½ "
For years ended June 30, 1915.....	1 "
Since 1915 nothing has been paid on these bonds.	

Interest on 5 per cent. Prior Lien Bonds, amounting to \$12,166.66 per annum, has been paid since these bonds were issued in 1906 and an amount of \$9,733.33 appropriated annually from Net Revenue for the redemption of these bonds.

In the absence of a return as to the taxes for 1919, the figure for 1918 may be taken, viz., \$4,530.94. Omitting the amount set aside for redemption of the Prior Lien Bonds, the following summary situation regarding the charges against net operating revenue for the year ending June, 1919, is available:—

Consolidated Mortgage Bonds, \$2,856,333.88 at 5 per cent..	\$ 132,816 69
Prior Lien Bonds, \$243,333.33 at 5 per cent.....	12,166 66
Taxes..	4,530 94
	<hr/>
Net operating revenue..	\$ 149,514 29
	<hr/>
Deficit..	\$ 116,200 75

In 1918, the net operating revenue per mile amounted to \$421. This is exclusive of deductions for interest on funded debt (only a small portion paid), hire of equipment and other deductions. For 1919, the figure is \$295.

The decision of the Board already referred to points out that the bulk of the freight tonnage carried is low grade. For 1918, produce of forests, etc., represented 72.5 per cent; agriculture, 3.2 per cent; stone, sand, etc., 13.7 per cent. The latter was a special movement in connection with building construction. For 1919, the freight revenue per mile of line was \$2,423, while the passenger revenue was \$479. For 1917, the latest year for which full returns for all the railways of Canada are available, the freight earnings per mile of line of all Canadian railways was \$5,575, while the passenger earnings were \$1,069. Comparisons were made at the hearing, e.g. by Mr. Paradis, who appeared for the Municipality of St. Mathias de Cabano; between the Temiscouata and the Intercolonial (Canadian Government Railways), contending that the former was in a better position from the standpoint of cost than the latter. The volume of business must be looked to. For 1917, the freight and passenger earnings per mile of line on the Intercolonial were respectively \$7,460 and \$3,312.

As illustrative of the increases in cost, reference may be made to certain items. In 1915, coal on the engines cost \$4.60 per ton as against \$7.85 in 1919. This means increase in cost on the quantity used of \$32,500 alone. The figures for coal consumption in passenger business are not given. If the average coal consumption in Canada for 1917 on straight passenger locomotive runs is taken and also one-half of the mixed locomotive mileage consumption (the allocation is arbitrary), this would mean an increase in cost for coal in passenger business of \$14,552.

The average number of ties used is 18,000 per annum. The price has increased from 25 cents in 1915 to 65 cents in 1919, or a total increase of \$7,200.

The increase in wage costs for the year ending June, 1919, as compared with the previous year represents an increase of approximately \$80,000. The situation as set out in evidence is as follows:—

“Commissioner McLEAN: Your pay-rolls in 1918, as I remember, figured about \$133,000. You give the figures here for May, 1919. What was your total pay-roll for the year ending June, 1919?—A. I have not just got the figures. It would be about \$213,000. I figure that they went up about \$80,000. That is on account of the McAdoo Award, which we were obliged to apply.

“Q. That is more than 25 per cent on your former expenditure. What is the large increase due to?—A. Due to the fact that in 1915 and before that time we were lower than the accepted wages paid on other Canadian roads, the same as all other small roads. We were subject to this McAdoo Award. This McAdoo Award in many cases fixed the minimum wage. For instances we had men we were paying 30 cents an hour that went up to 68. Our apprentice boys starting in at 5 cents now start in at 25. In some cases some of our shopmen's wages went up 200 per cent, so that the increase in freight rates did not compensate us for the increase in wages that we were obliged to give under the McAdoo Award.

“In 1918 you had about 157 employees. What would those average for the year ending June, 1919?—A. I imagine it would run about a hundred and sixty.

“Q. And the figures you give would be an increase of about 60 per cent in your wages?—A. It would average probably a little more than that. I had worked out some figures for the War Board. We could give them to you.

“Q. We would like all the details you can give as to costs.

“Commissioner BOYCE: The cost of operation per train mile, has that been a steady increase since 1914?—A. It has been a pretty steady increase both in wages and material, coal especially.

"Q. Have you filed a statement showing that year by year, the cost of operation per train mile?—A. I think not, but I think I have it here. I have it from 1914 to 1917. It went up from 1.17 to 1.58. In 1917 and 1918 it went to 2.01. November was 2.63, December 2.80, January, 1919, 3.19, February 3.38, April was 2.93, May 2.85. Of course the figures for January and February were due to the hard weather we had to contend with in the winter months. For instance, one storm on the 24th of January gave us in one place 15 feet of snow to buck between here and St. Honore. For 24 miles it took us two days to open the road. I worked out the figures for the Canadian War Board, and for our shop-hands, machinists, blacksmiths, fitters and boiler-makers the increase over 1915 was from 75 to 118 per cent. Carpenters 100 to 200 per cent. Labourers 100 per cent. Section hands increased 90 per cent. Officials and clerks 54 per cent. Trainmen increased from 63 to 91. Enginemen from 46 to 60 per cent.

"Commissioned BOYCE: Is that all due to the McAdoo Award?—A. Yes."

The company makes no provision for depreciation. When it has anything over after paying interest on prior lien bonds and sinking fund, appropriations are made from the balance for ballasting and other work. Since 1912, the company has thus provided and expended \$60,000 on the line. The expenditure on rails is light. The rails in place are Cammel steel. As they are getting old, they will have to be replaced in five or six years. No fund is set aside for their replacement. The company has \$43,000 of capital money unspent at the present time; that is practically its working capital.

On ballasting, the company has since 1912 spent some \$74,000. Of this, \$30,000 was from revenue and \$44,000 from capital. The manager of the railway expects an appropriation of \$12,000 for ballasting on the eastern end of the line this year.

Attention was directed to conditions on the branch from Edmundston to Conners. For a considerable portion of this line there is railway paralleling competing for light traffic. In May, 1919, there were 1,234 passengers carried on this branch, with an average haul of 12.7 miles and an average fare of 44 cents—a total passenger earning of \$542.73. The earnings for June were \$512.24. The freight revenue on this branch has recently been increased by a movement of pulpwood from Baker Brook, which movement it is expected will be over by August. The passenger service is mixed. The Company computes average earnings as \$2,500 per month from the branch, while its train service cost, as figured for May, 1919, at \$2.85 per train mile would amount to \$4,942.08 per month.

The reason for the cancellation of the second-class fares is explained by the company as follows:—

"At the present time this company's express train consists of one baggage and mail car, one second and one first-class car. As a rule, there are very few passengers in the second-class car, while very often the first-class is crowded; this first-class car contains a smoking compartment. Passenger business is showing some increase and more first-class space is needed on the train. We, therefore, intend to take the smoking compartment out of our first-class car and fix up our second-class car as a smoking car and by doing this our present equipment will be sufficient to look after our passenger business for some time to come.

"Our passenger motive power is very light and over 25 years old, and the addition of another first-class car to our train would seriously affect the running time of this train as we ascend over 1,000 feet in the first 24 miles after leaving Rivière du Loup.

"I claim that according to the Railway Act that we are within our rights in cancelling our second-class rates. Our freight and passenger rates are not any higher than the rates in effect on other Canadian railways and we give as

good a service as any other railway of our size in Canada and much better than the majority of the small railways give. Our passenger equipment is kept in good repair and is thoroughly cleaned daily. Owing to the large increases in wages and material we are obliged to practice the strictest economy in order to even meet operating expenses, and we are not able at the present time to spend the money necessary to provide another first-class, especially when we are hauling a second class car practically empty which can be utilized for smokers and thereby provide first-class space for non-smokers."

As further explained at the hearing, the Company's position is as follows:

"Commissioner BOYCE: What is the difference between the first and second class fare?—A. Decimal forty-five. That we have cut off. We have nothing but first-class fares. Our first-class business was increasing. Our car was coming in here at night practically full, people were complaining about not having enough room in the first-class while in the second there would be probably 6 or 7 passengers coming in at night; we turned the second into a smoking car and cut out the smoking in the first-class. We have not been able to cut out the smoking part yet. I have the seats on order, and as soon as they come we will put them in and it will give more room in our first-class car with the same equipment on the train.

"Q. How many more seats in the first-class car?—A. It will handle 20 more first-class passengers in the first-class car."

.....
 "Commissioner McLEAN: Have you any figures showing the extent to which the second-class car you were handling was empty?—A. We get that from general observation as much as anything.

"Q. Your conductors' returns would show it?—A. Yes.

"Q. How many could you seat in that car?—A. I think 60 something.

"Q. Then your statement is that on the average not more than 10 per cent of the space was taken up?—A. That is it; in fact first-class passengers were making a habit of going in there to smoke.

"Q. That is your statement, that only 10 per cent of your space was taken up, and you were running a car for that purpose?—A. Yes, and we did not have enough space in our first-class car. We have not got the money or the cars to put an extra first-class car on, and we have not got the engines to haul them. I thought that was the best solution."

Detail information as to the real need for a second-class fare was not furnished by the applicants at the hearing. Dr. Dube, who represented the Parish of Notre Dame du lac, raised the question as to whether there was not a charter obligation on the part of the Temiscouata Railway to have second-class fares. This was answered in the negative. There does not appear to be any statutory obligation in the Special Act.

No provision is contained in The Railway Act as to provision for second-class fares.

Even if the Board has discretion to direct the installation of second-class fares—a point it is not necessary to pass upon here—the facts as developed in regard to cost conditions and revenues do not warrant the exercise of this discretion by way of direction for their re-installation on the Temiscouata Railway.

The average haul per passenger is approximately 28 miles. For the period 1914-1918 it averaged 27.99 miles.

As already pointed out, it cost over 90 cents on the dollar to operate during the year ending June, 1919. In the month of April, 1919, it cost 98.6 cents to earn one dollar. For the four months ending April 1919 it cost 96.5 cents to earn one dollar as compared with 85 cents for the same period in 1918. The train mile costs which

were \$2.65 in November 1918 were \$2.85 in May, 1919. In April 1919, the passenger service train revenue per train mile was \$1.15, while the operating expenses per train mile amounted to \$2.92.

Exact data permitting the differentiation of passenger train mile costs from freight train mile costs are not available. If cost is arbitrarily allocated in the proportion that passenger train mileage bears to freight train mileage, this would give a passenger train mile cost of \$2.70. If an arbitrary reduction of $\frac{1}{3}$ is made from this because of the smaller coal consumption of passenger locomotives and the lower cost of upkeep of passenger cars as compared with freight cars, it would still leave a figure of \$1.80.

The passenger car miles for the year ending June 30, 1919, amounted to \$204,358. Allocating the revenues earned in passenger train service on a passenger car mile basis, the result is as follows:—

		Passenger car-mile earnings.
Passenger earnings.. . . .	\$54,165 99.....	26·54 cents.
Mails.. . . .	5,991 68.....	2·80 “
Express.. . . .	3,552 39.....	1·70 “
	<hr/>	<hr/>
	\$63,710 06	31·04 “

The Canadian Pacific Railway, with a large and diversified volume of traffic, has an opportunity to effect economies in detail operating costs which are not available to a road so situated as is the Temiscouata. In the evidence submitted by the Canadian Pacific in the matter of railway mail-pay, it was computed that the passenger mile cost for the six-months period ending February 1, 1919, was 33·10 cents. Without a detailed analysis, which has not been made, of the comparative conditions of the two railways it cannot be said that the evidence as submitted by the Canadian Pacific is necessarily conclusive in the case of the Temiscouata. It is simply referred to as illustrative.

On consideration of all material factors concerned, a case for increasing the first-class standard fare to 4 cents per mile has been made out. This increased rate may become effective on compliance with the provisions of The Railway Act as to Standard passenger fare publication.

As indicated, various matters affecting service were referred to at the hearing. The Board has taken cognizance of these and if the matters are not satisfactorily adjusted, further investigation, if need be, will be made by the Board's Operating Department.

JULY 25, 1919.

The Deputy Chief Commissioner and Commissioner Boyce concurred.

ORDER NO. 28620.

In the matter of the application of the Temiscouata Railway Company, hereinafter called the "Applicant Company," for permission to increase its standard passenger fare to four cents per mile;

And in the matter of the complaint of the Municipality of Ste. Rose du Degele, in the Province of Quebec, against the cancellation of second-class fares by the Applicant Company.

File No. 1010.3.

THURSDAY, the 31st day of July, A.D. 1919.

W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the matter at the sittings of the Board held at Riviere du Loup, July 10, 1919, the Applicant Company, the Municipalities of Edmundston, Cabano, Riviere du Loup, and Temiscouata, the County of Madawaska, and the towns of Notre Dame du Lac and Ste. Rose du Degele, and what was alleged at the hearing; and upon reading the further submissions filed—

It is ordered: That the Applicant Company be, and it is hereby, authorized to publish and file tariffs increasing its first-class standard passenger fare to four cents a mile; and that the increased rate herein authorized shall not become effective until the Applicant Company has complied with the requirements of Sections 330 and 334 of the Railway Act, 1919.

2. That the complaint of the Municipality of Ste. Rose du Degele be, and it is hereby, dismissed.

W. B. NANTEL,
Deputy Chief Commissioner.

Application of the Corporation of the City of Brantford for an Order directing that the proposed subway at St. Paul's avenue, Brantford, under the Grand Trunk Railway, be a vehicular subway, including sidewalks for pedestrian traffic; and that the Railway Company bear the additional expense should the subway be built to accommodate the future requirements of the railway company.

File No. 8349.2.

JUDGMENT.

The CHIEF COMMISSIONER:

This application was heard at a sittings of the Board held in Ottawa on July 8, 1919. In so far as the legal position of the parties is concerned, that question was dealt with by the Board's judgment written by Mr. Scott, the late Assistant Chief Commissioner, on a previous application made by the city and heard in Hamilton on April 12, 1917.

Under that judgment, which I would adopt, the position is that St. Paul's avenue has been legally closed for vehicular traffic, but is still open for pedestrians. The judgment of April, 1917, authorized the construction of a subway for pedestrians. The cost was then estimated at \$10,000, and the judgment of April, 1917, divided the cost, less the regular proportion to be paid from the Grade Crossing Fund, between the Grand Trunk and the city, the Grand Trunk paying 60 per cent.

The city still wants a vehicular subway, and is not satisfied with the pedestrian subway authorized by the former judgment. Under these circumstances, in my opinion, the point is a proper and appropriate point for a vehicular subway. It is necessary in the city's interests, but the city by its agreement and by-law legally closed the street in so far as vehicular traffic is concerned, and the application, therefore, must be considered as an application to open a new crossing in so far as vehicular traffic is concerned.

The plans submitted by the city on the application are proper and sufficient. In my opinion an Order ought to go approving the plans and authorizing the construction of the subway. This subway, of course, will accommodate pedestrian as well as vehicular traffic, and while the Grand Trunk is senior in so far as vehicular traffic is concerned, it is just that the Grand Trunk should make the same proportion of contribution that it would have made had the pedestrian subway, which will now become unnecessary, been constructed.

The city claims that the cost of the pedestrian subway has since greatly increased. Mr. Mountain, the Board's Chief Engineer, has carefully considered the cost of putting a pedestrian subway under the existing Grand Trunk tracks, and finds that the cost will be \$11,000. The Grand Trunk ought to contribute to the cost of the larger subway just as it would have contributed were a pedestrian subway to-day built costing \$11,000 under the judgment of April, 1917.

But the matter is further complicated. The Grand Trunk urges that the subway must provide for four tracks. The Grand Trunk at present has but two, and two seem to have enabled the company properly to look after the Brantford business. The company claims, however, that more accommodation will be necessary and insists on the subway being built for four tracks, all at the expense of the city.

It is perfectly true that under the Board's settled practice, where new highways are constructed over a railway right of way, the subways must be made broad enough to carry not only the existing tracks but tracks which will reasonably become necessary. In some cases the additional tracks are provided for in the first instance, in other cases the municipality takes the chance of building its abutments without making provision for extra tracks, and is at the responsibility of providing the substructure and bridge for the extra tracks over the subway as and when it becomes reasonable and proper to construct. Under this practice the company insists that the city should be at this responsibility and cost.

The circumstances of this case are somewhat unusual. The land where the former street was, was never bought or acquired by the railway company as part of its statutory right of way in the ordinary manner. In the first instance, the railway tracks were laid over an existing highway. The agreement of July 24, 1905, was then made. Under this agreement, the Grand Trunk undertook, at its own cost and expense, to build certain subways, and the city on its part undertook to take all necessary and proper steps for the permanent closing and stopping up against public travel of St. Paul's avenue, subject to the right of pedestrians to cross.

The city's agreement contemplates a permanent closing and stopping up of the street. The agreement has been carried out by both parties, and is binding upon them. Under these circumstances it is obvious that if the city, in breach of its agreement but in the public interest, seeks to open St. Paul's avenue for vehicular purposes, the Grand Trunk ought not to suffer therefrom. On the other hand, the Grand Trunk ought not to make the cost of construction unreasonably expensive. The improvement ought not to be made more difficult by providing for unnecessary tracks. In my opinion no more tracks are to-day necessary. I am further of the opinion that in any event no tracks, in the interests of the railway itself, are required at this point.

The railway layout of June 30, 1909, shows a tub-track to the south of the running tracks, which is used in connection with the freight yard and industries abutting thereon. Brantford being a manufacturing point, its shipping increased during the

war, and the extension which the company made of 560 feet to the west proved sufficient for that business.

It is significant that this track is still a tub-track; it is not connected with the running tracks. The distance from the track as extended westerly to St. Paul's Avenue is 340 feet. Eight more cars can therefore be accommodated by an extension to this point, thus again somewhat enlarging the facilities over what was proven to be sufficient at the peak of the movement.

At the hearing, the company's engineer stated that the additional tracks were required for the purpose of getting a better movement, and pointed out that the movement west out of Brantford was on a very heavy grade. His real object was shown to be to get room for a train standing out to go into the yard clear of the running tracks.

No attempt has been made in the past to do this, although the distance from St. Paul's Avenue to the yard is approximately half a mile. In this distance there is ample room for the accommodation of the ordinary freight train. In my view, however, this construction will not be found to be necessary or convenient for the railway itself. As the railway engineer points out, the movement out of Brantford to the west is bad. The grade is .95, while the entrance from the east is easy.

It is obvious that under such circumstances the movement in the company's interest will be confined to the necessary movement on the double track in and out of Brantford. It is quite obvious that a train of any proper load must stand on the levels to the east, rather than on the grade at the point in question, where a start would be exceedingly difficult, if not impossible.

It may be that the development of the future may necessitate other tracks over the subway. At the present I am unable to think of any condition that would render them necessary, conformable to good railway practice. If they become necessary, the matter can be dealt with on an application made subsequently by the railway company to the Board. At the present I would therefore approve the plans of the city, which provide merely for a two-track subway.

OTTAWA, August 1, 1919.

Commissioner Goodeve concurred.

Application of the Dominion Millers' Association, the Canadian Millers' Committee, the Canadian Manufacturers' Association, the Ontario Retail Lumber Dealers' Association, the Toronto Board of Trade, the Peterborough Board of Trade, and the Premier Potato Company, Limited, for revision of Rule 9 of the General Order of the Board No. 201, dated August 1, 1917, and the restoration of the demurrage toll in effect prior to August 20, 1917.

File No. 1700.

The CHIEF COMMISSIONER:

This complaint is made by shippers and consignees who desire that the present demurrage tolls should be decreased. No complaint is made as to the basis of the present tariff. On the other hand, shippers think it more equitable than the tariff in force in the United States. The whole question is the amount.

The application is opposed by the railways, who are desirous of getting as many cars as possible on hand for the grain movement and of keeping terminals as free as possible, so as to prevent congestion and blocking the movement.

Mr. Marshall, for the Toronto Board of Trade, and who supported the application, introduced figures which showed, for the period under review under the increased demurrage tolls, affording as they do a direct incentive to shippers to load and to consignees to unload with all diligence, a saving of 90,820 car days.

The shippers are not unanimous on the application. The Ford Motor Company state:—

“We have not felt any serious effect resulting from the higher demurrage charges, and if these higher charges have resulted in the more prompt release of equipment and the reduction of congestion, we cannot see that it would be wise to reduce to the old basis, as we feel that it would only be inviting a return of old conditions of car shortage and congestion when the volume of traffic is again restored.”

Mr. Tilston, who appeared for the Montreal Board of Trade said:—

“This matter has been considered very carefully by my committee, and from what we know of the car shortage, if we are going to succeed in moving the crop in the fall, it will be very undesirable for the Board to make any reduction in the present demurrage rates. The present rates of \$1, \$2, \$3 \$4, and \$5 are more equitable to the honest dealer who is doing his best to unload his cars within the free time limit. The Board should not make any reduction in these penalties.”

The present situation is not normal. Usually some 62 per cent of the country's grain moves via Buffalo. Owing to the requirements of the United States movement, Buffalo is this year closed to our grain. If anything like a proper movement of grain overseas is to be made, full facilities must be given the traffic. The car supply must be sufficient, and terminal congestion so often arising out of delayed cars avoided as much as possible. The car days saved under the higher tolls and amounting to 90,820 would, allowing 6 days for the short movement from the Bay ports to Montreal, and with a loading of 1,600 bushels to a car, afford transportation for no less than 25,212,800 bushels to our chief sea port.

In the public interest no reduction can be made under the present circumstances, and the application ought to be dismissed.

AUGUST 1, 1919.

Commissioners Goodeve and Boyce concurred.

ORDER No. 28622.

In the matter of the application of the Dominion Millers' Association, the Canadian Millers' Committee, the Canadian Manufacturers' Association, the Ontario Retail Lumber Dealers' Association, the Toronto Board of Trade, the Peterborough Board of Trade, and the Premier Potato Company, Limited, for revision of Rule 9 of the General Order of the Board No. 201, dated August 1st, 1917, and the restoration of the demurrage toll in effect prior to August 20, 1917:

File No. 1700.

FRIDAY, the 1st day of August, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, July 8, 1919, the Canadian Manufacturers' Association, the Boards of Trade of Montreal and

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Toronto, the Canadian Lumbermen's Association, Canadian Car Demurrage Bureau, Michigan Central Railroad Company, and the Grand Trunk, Canadian Pacific, and Canadian National Railways being represented at the hearing, and what was alleged—

It is ordered that the application be, and it is hereby, dismissed.

A. S. GOODEVE,
Commissioner.

Applications of the Hydro-Electric Power Commission of Ontario for authority to construct a canal and construction railway across the rights of way of the Toronto & Niagara Power Company and the Toronto, Niagara & Western Railway Company on Lots 124 and 187 of the Township of Stamford, in the Province of Ontario.

File Nos. 28234·4 and 28234·6.

JUDGMENT.

THE CHIEF COMMISSIONER:

These applications were heard together at a sittings of the Board held in Ottawa on June 10. The question of the Board's jurisdiction was raised by counsel for the Toronto & Niagara Power Company.

The position of that company is that not only has the Board no jurisdiction to permit the crossings, but that the Hydro-Electric Power Commission has not the right in law to embark upon and carry out the canal power project. It was shown that an action was pending raising the question of the status of the Hydro-Electric Power Commission.

The position taken by counsel for the company is perfectly clear. He did not desire to waive any right that the company might possibly have, but at the same time he was not anxious to block the scheme in any way on a technicality, and perhaps improperly stop a large public work, subject, however, always to the reservation of the company's rights. In the course of the discussion Mr. McCarthy said: "If the Board has no jurisdiction, and my friends come to me—I am not anxious to block the scheme in any way, and do not want to be understood as intending to block it—but I want to be understood as protecting our rights in that litigation, and I do not want it to be said that I consented to the crossing of our property."

The engineers were directed to get together with a view of ascertaining exactly what the Commission's proposals meant and the sufficiency of the plans. Naturally no agreement was come to between the Engineers, as the Engineers of the Company were just as anxious to do nothing that would in any way prejudice the company's status, or reduce the matter to the basis of an agreement.

A working basis, however, was subsequently arrived at, and detail plans filed with the Board on July 9. These plans have been carefully scrutinized by the Board's Engineers; they are satisfactory, and before leaving Ottawa on July 17 I settled and signed orders in each case permitting the crossings to be made. I found on my return to Ottawa to-day that the orders have not been issued, owing to a request from Mr. McCarthy that the form of the orders should be submitted for the consideration of the parties. This has been done. I find that Mr. McCarthy has since written as follows:—

"I beg to acknowledge the receipt of your letter of the 18th instant, enclosing copy of proposed order herein, which has, I note, been prepared in accordance with the memorandum prepared by Mr. Murphy.

"First, in regard to the recital, I would call your attention to the notes of the proceedings before the Commissioners when this application was made, because it was distinctly stated that this application was to be without prejudice to our rights in the pending litigation between the Hydro-Electric Commission

and the Toronto Power Company and the Electrical Development Company, and I think some provision should be included in the recital of the order, so that my clients are not in any way prejudiced by the same.

"I would also call your attention to the fact that no evidence was actually offered. As a matter of fact, the engineers of both parties were sent down to see Mr. Murphy, and in the meantime counsel for the Commission left on the noon train. You will observe that at the end of the memorandum the following clause appears:—

'The following matters are to be arranged between the solicitors of the Company and the Commission: (a) As to the right to bring action in case of any dispute, not only during construction, but afterwards. (b) As to compensation for damages by reason of the construction and operation of the canal, exclusive of land damages.'

"Now the other parts of the order follow in effect the memorandum prepared by Mr. Murphy, with the exception of the last clause, to which I have just called your attention, and this clause is the most important one from our standpoint, and I think the same should be included in the order. I have suggested to the Commission that we draft some clause which will give effect to the above provisions, as I do not think the clause as included in the order as drawn, gives effect to these provisions.

"I also do not wish to be taken as consenting to the Order or the authority of the Board to make the Order, but what I am most particular about is that if any damage or injury is caused us during the work of construction, or thereafter, by reason of the building of the canal, that the right to bring an action is reserved to us without the necessity of obtaining the leave of the Attorney General."

In view of the situation, the parties are entitled to a statement of the circumstances under which the Orders issued. The Commission's right to build the canal has not been and is not considered one way or the other by the Board. The question of that right is already in the Courts, and the legal rights to object to the construction are not considered or prejudiced one way or the other by the Board's Orders. The Board's Orders do not give the Hydro-Electric Power Commission any authority to construct and maintain the power canal and electrical development. If that Commission has the authority it may, however, make the necessary crossings. If it has not the authority and the Court so finds, the whole work can be stopped just as much as if no Order whatever was made.

The Orders which are issued, in other words, are entirely without prejudice to the Company's right to object to the construction of the canal as such, and the Company is left with its appropriate remedy in the Courts.

Then on the question that no evidence was actually offered. It is the custom of the Board to accept the statements of fact given by counsel as evidence, and this objection fails.

Then as to the form of the concluding paragraph. The Company objected that no action could be brought against the Hydro-Electric Power Commission except on a fiat, so that their legal rights under the Orders might well become difficult of enforcement. In my opinion that matter is best left as the Order settled reads. The objective point raised, that is, the question of damages, is reserved to be dealt with by the Board by an amending Order. The matter of a fiat is not of any importance here, as the Order itself only permits the crossing, "subject to and upon the terms and conditions set forth in this Order, or any Order amending the same."

The whole matter is left in the hands of the Board, and in case the terms of the Order, or any amending Order, are not properly complied with by the Commission, all rights under the Order are terminable.

Paragraph (b) of the Order No. 28456 and paragraph (a) of Order No. 28455 provided,—

“A revised plan, with dimensions thereon, to be submitted by the Applicants for the approval of the Company before the work commences; a copy of the approved plan to be filed with the Board.”

The Board's Engineer finds that the plans submitted are at the present sufficient. There is, therefore, no necessity for this clause. The Orders will issue with this clause stricken out.

OTTAWA, August 1, 1919.

Commissioners Goodeve and Rutherford concurred.

ORDER No. 28556.

In the matter of the application of the Grand Trunk Railway Company of Canada, hereinafter called the “applicant company,” under sections 237 and 258 of the Railway Act, for approval of plan, dated May, 1919, and plan No. P-1-42, dated June 5, 1919, showing the new station and freight house to be erected by the applicant company at Gravenhurst, on the 12th district, Barrie division of its railway, on file with the Board under file No. 29484; and for authority to construct, maintain, and operate three additional railway tracks, at grade, across Church street, in the town of Gravenhurst, as shown coloured red on said plan, No. P-1-42, dated June 5, 1919, and on the plan, dated Allandale, July 12, 1919, on file with the Board under said file No. 29484.

MONDAY, the 21st day of July, A.D. 1919,

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon the report and recommendation of the Chief Operating Officer of the Board, and the consent of the town of Gravenhurst, as evidenced by by-law P-59, passed on June 18, 1919, a certified copy of which is on file with the Board; and upon the report and recommendation of the Assistant Chief Engineer of the Board, the town of Gravenhurst agreeing to pass such by-laws as may be necessary to authorize the laying of extra tracks across Church street,—

It is ordered: That, subject to the terms of said by-law P-59, the plan, dated May, 1919, and plan No. P-1-42, dated June 5, 1919, showing the elevation and location of the new station and freight house to be erected by the applicant company at Gravenhurst, on the 12th district, Barrie division, of its railway, on file with the Board under said file No. 29484, be, and they are hereby, approved.

2. That the applicant company be, and it is hereby, authorized to construct, maintain, and operate three additional railway tracks, at grade, across Church street, in the town of Gravenhurst, as shown on the said plan No. P-1-42, dated June 5, 1919, and on the profiles, dated Allandale, July 12, 1919, on file with the Board under said file No. 29484; the crossings of Church street to be constructed in accordance with “The Standard Regulations of the Board affecting highway crossings, as amended May 4, 1910.”

S. J. McLEAN,
Commissioner.

ORDER No. 28561.

In the matter of the application of the Marconi Wireless Telegraph Company of Canada, Limited, under the provisions of the Railway Act, 1919, for the approval of certain conditions for the acceptance and transmission of Marconigrams as set out in the forms filed with the Board under file No. 10041.13.

TUESDAY, the 22nd day of July, A.D. 1919.

S. J. McLEAN, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading the application, and what is alleged in support thereof,—

It is ordered: That the form marked "A," containing the conditions of acceptance of Marconigrams filed for transmission via the Canadian Pacific Railway telegraphs, and the form marked "B," containing the conditions of acceptance of Marconigrams, filed with the Great North Western Telegraph and the Western Union Telegraph Companies, filed with the Board under said file No. 10041.13, be, and they are hereby, approved.

S. J. McLEAN,
Commissioner.

"A"

Conditions under which Marconigrams to the United Kingdom are accepted.

1. To guard against mistakes or delays the sender of a message should order it repeated; that is, telegraphed back to the originating office for comparison. For this one quarter the unrepeatd message rate is charged in addition. Unless otherwise indicated on its face, this is an unrepeatd message, and paid for as such.

2. It is agreed by the sender of this message that neither the Marconi Company nor its landline connections shall be liable for mistakes or delays in transmission or delivery, nor for non-delivery to the addressee, of any unrepeatd message beyond the amount of the tolls collected for transmission; and that neither the Marconi Company nor its landline connections shall be liable for mistakes in the transmission or delivery, nor for delay or non-delivery of any unrepeatd message beyond fifty times the extra sum collected from the sender for repeating such message. It is further agreed by the sender that neither the Marconi Company nor its landline connections shall be liable in any case for delays arising from unavoidable interruption in the working of their lines, nor for errors in cipher or obscure messages.

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THE MARCONI WIRELESS TELEGRAPH COMPANY OF CANADA,
LIMITED

MONTREAL, QUE.

MAIN 8144.

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3. No responsibility attaches to either of those companies concerning messages until the same are accepted at one of the transmitting offices of the company sought to be charged with liability; and if a message is sent to such office by one of the messengers of the said company, he acts for that purpose as the agent of the sender.

4. Each of the companies will not be liable for damages or statutory penalties in any case where the claim is not presented in writing to such company within sixty days after the message is filed with it for transmission.

5. Either of these companies is hereby made the agent of the sender, without liability, to forward this message.

6. No employee of either of these companies is authorized to vary the foregoing.

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THE MARCONI WIRELESS TELEGRAPH COMPANY OF CANADA,
LIMITED.

J. N. GREENSHIELDS, K.C., *President*. THOMAS ROBB, *Managing Director*.

THE GREAT NORTH WESTERN TELEGRAPH COMPANY OF CANADA

Z. A. LASH, *Pres.*

THE WESTERN UNION TELEGRAPH COMPANY

THEO. N. VAIL, *Pres.*

MARCONI WIRELESS TELEGRAPH COMPANY OF AMERICA

JOHN W. GRIGGS, *Pres.*

ORDER No. 28598.

In the matter of the application of the fruit shippers of the Niagara District, Ontario, complaining of the failure of the Canadian Pacific Railway Company and the Dominion Express Company to provide adequate and suitable train facilities for fruit shipments from Hamilton, Ont., destined to points in the Maritime Provinces.

File-No. 4214-580.

TUESDAY, the 22nd day of July, A.D., 1919.

A. S. GOODEVE, *Commissioner*.

A. C. BOYCE, K.C., *Commissioner*.

Upon reading the application and what is alleged in support thereof, and what has been filed on behalf of the Canadian Pacific Railway Company and the Dominion Express Company, and the report and recommendation of the Chief Operating Officer of the Board made after correspondence and discussion with representatives of the companies interested,—

It is ordered: That the Canadian Pacific Railway Company be, and it is hereby required to arrange to provide suitable accommodation for fruit shipments from Hamilton, Ont., destined to points in the Maritime Provinces by the following train service, namely:—

Train No. 832 leaving Hamilton at 8.30 p.m., and held at Toronto for Train No. 20 to connect with train No. 16 at Montreal.

2. That the Dominion Express Company be, and it is hereby required to notify shippers of any failure to make said connection at Montreal between trains Nos. 20 and 16, so as to enable said shippers, if thought desirable, to dispose of the fruit in the Montreal market.

A. S. GOODEVE,
Commissioner.

ORDER No. 28563.

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "applicant company," for authority to remove its regular station agent at Thorncliffe station, in the province of Ontario.

File No. 4205.217.

WEDNESDAY, the 23rd day of July, A.D. 1919.

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application, and on behalf of the municipality of the township of Ferris, and the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the applicant company be, and it is hereby, granted leave, pending further order, to remove its regular station agent at Thorncliffe station, in the province of Ontario.

S. J. McLEAN,
Commissioner.

ORDER No. 28564.

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "applicant company," for authority to remove its regular station agent at Gunton, in the province of Manitoba.

File No. 4205.196.

THURSDAY, the 24th day of July, A.D. 1919.

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application, and on behalf of the residents and farmers in the vicinity of Gunton, and the report and recommendation of an Inspector of the Board,—

It is ordered: That the applicant company be, and it is hereby, granted leave, pending further order, to remove its regular agent at Gunton station, in the province of Manitoba, subject to and upon the condition that a caretaker be appointed to keep the station clean, and, when necessary, heated and lighted for the accommodation of passengers on the arrival and departure of trains, and to care for less than carload freight and express matter.

S. J. McLEAN,
Commissioner.

ORDER No. 28565.

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "applicant company," for authority to remove its regular station agent at Komarno, in the province of Manitoba.

File No. 24534.

THURSDAY, the 24th day of July, A.D. 1919.

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application, and on behalf of the citizens of Komarno, and the report of an Inspector of the Board,—

It is ordered: That the applicant company be, and it is hereby, granted leave, pending further order, to remove its regular agent at Komarno station, in the province of Manitoba, subject to and upon the condition that a caretaker be appointed to keep the station clean, and, when necessary, heated and lighted for the accommodation of passengers on the arrival and departure of trains and to care for less than carload freight and express matter.

S. J. McLEAN,
Commissioner.

ORDER No. 28566.

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "applicant company," for authority to remove its regular station agent at Methven, in the province of Manitoba.

File No. 4205.197.

THURSDAY, the 24th day of July, A.D. 1919.

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application, no objection being offered by the municipality of Oakland, although duly notified of the proposed removal, and the report and recommendation of an Inspector of the Board,—

It is ordered: That the applicant company be, and it is hereby, granted leave, pending further order, to remove its station agent at Methven, in the province of Manitoba, subject to and upon the condition that the tower-man at the said station shall look after the interchange reports, keep the station clean, and, when necessary, heated and lighted for the accommodation of passengers on the arrival and departure of trains, and care for less than carload freight and express matter.

S. J. McLEAN,
Commissioner.

ORDER No. 28594.

In the matter of the application of the Midland Railway Company of Manitoba, hereinafter called the "applicant company," under section 330 of the Railway Act, 1919, for approval of its Standard Freight Tariff, C.R.C., No. 80:

File No. 5047.14.

SATURDAY, the 26th day of July, A.D. 1919.

S. J. McLEAN, *Commissioner*.

A. S. GOODEVE, *Commissioner*.

Upon reading what is filed in support of the application, and the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the applicant company's standard freight tariff, C.R.C. No. 80, to take effect August 24, 1919, to apply locally in Manitoba between points on the applicant company's railway north of Midland Railway Junction, cancelling the said company's standard freight tariff, C.R.C. No. 5, be, and it is hereby, approved; the said tariff together with a reference to this Order to be printed in at least two consecutive weekly issues of the *Canada Gazette*.

S. J. McLEAN,
Commissioner.

ORDER No. 28611.

In the matter of the application of the residents of Elie, in the province of Manitoba, under section 188 of the Railway Act, 1919, for an Order directing the Canadian National Railways to erect a new station, with better location and accommodation, at Elie, Manitoba.

File No. 29290.

A. S. GOODEVE, *Commissioner*.

A. C. BOYCE, K.C., *Commissioner*.

TUESDAY, the 29th day of July, A.D. 1919.

Upon reading what is filed in support of the application and on behalf of the Canadian National Railways; and upon the report and recommendation of the Chief Operating Officer of the Board—

It is ordered: That the Canadian National Railways be, and they are hereby, directed to construct a third-class station building and an extension to its passing track at Elie, in the province of Manitoba, as shown on the plan dated Winnipeg, October 6th, 1916, on file with the Board under file No. 29290; the work to be completed by the 31st day of October, 1919.

A. S. GOODEVE,
Commissioner.

ORDER No. 28619.

In the matter of the application of the Express Traffic Association of Canada, under Section 322 of the Railway Act, 1919, for approval of a proposed Supplement No. 13 to Express Classification No. 3:

File No. 4397.48.

THURSDAY, the 31st day of July, A.D., 1919.

A. S. GOODEVE, *Commissioner*.

A. C. BOYCE, K.C., *Commissioner*.

J. G. RUTHERFORD, C.M.G., *Commissioner*.

Upon reading what has been filed in support of the application and on behalf of the Boards of Trade of Toronto and Peterborough objecting to certain of the conditions of carriage contained in the said Supplement; and upon the report and recommendation of the Chief Traffic Officer of the Board—

It is ordered that, subject to the condition that the proposed Supplement No. 13, as finally revised and re-submitted to the Board under cover of letter from the secretary of the Association, of February 22nd, 1919, on file with the Board under file No. 4397.48, be published for two consecutive weeks in *The Canada Gazette*, the same be, and it is hereby, approved.

A. S. GOODEVE,
Commissioner.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Ottawa, September 1, 1919

No. 12

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Application of J. L. Atkinson, Kilgard, B.C., for overhead farm crossing over the tracks of the V.V. & E.:

JUDGMENT

File No. 572.58.

Heard at Vancouver, B.C., June 6, 1918.

THE ASSISTANT CHIEF COMMISSIONER:

The Vancouver, Victoria & Eastern Railway and Navigation Company has built its line into Vancouver through Mr. Atkinson's farm. The company took 4.97 acres for which they have paid Mr. Atkinson \$2,750, or at the rate of \$553.72 per acre. The railway passes between Mr. Atkinson's house and his barn. It separates several hundred acres of meadow land used for hay and grazing, from the applicant's barn and stables. At a point where it would be convenient to have a farm crossing leading from the house and meadow lands on the east of the railway to the barn on the west side, the railway is in a rock-cut of over 22 feet. He has not been given a level crossing at that point for his cattle and vehicles, but there are steps down on each side of the rock-cut for a pedestrian crossing at grade over the railway tracks. The applicant was given a grade crossing some distance north of the steps for the pedestrian crossing at a point where the embankment on each side of the track is not as high as it is at the steps. The level crossing is quite unsuitable for a farm crossing. On the west side the approach towards the barn is uphill on a grade of about 20 per cent on a rocky foundation which is slippery and unsuitable for vehicular travel in frosty weather. The grade on this approach cannot be improved.

I have walked over the ground in company with the applicant and the railway officials, and am satisfied that the Engineer who located the railway and provided for a grade crossing instead of an overhead at the place where the rock-cutting is 22 feet deep was unfair to Mr. Atkinson in doing so. The applicant should, certainly, have had an overhead crossing. Mr. Atkinson and the railway company made an agreement in writing, dated May 19, 1910, in which the company agreed—"to construct a road crossing between Lots 222 and 225, as shown on plan" thereto annexed. This is the vehicular grade crossing I have referred to. By the agreement, Atkinson releases the railway company from all damage to his lands by reason of the severing of such lands (those taken by the railway), from the other lands of the vendor, or otherwise injuriously affecting such other lands by the exercise of the statutory powers of the railway company. The company agrees to fence the right of way during construction and "make reasonable provision for a crossing." It is not clear whether the crossing for which the company was to make reasonable provision was to be one

that might be used during construction only, or whether it was to be a permanent crossing.

An engineer of the board has made an estimate of the cost of a bridge carrying the farm crossing over the railway at the point where the rock-cutting is 22 feet deep and he places the estimated cost at \$701.25.

The board, of course, is not bound by the agreement made between Atkinson and the railway company; but, notwithstanding the fact that the railway company in my opinion should have given Atkinson an overhead crossing, I would not be in favour of ordering one now unless he were willing to share in its cost. He has been paid a good price for his land and he has given a release in the agreement already referred to. If he were willing to share in the cost of an overhead bridge I would feel inclined to entertain his application; but, he has refused to pay any portion of the cost of the bridge for which he applies.

Therefore, I think this application should be dismissed.

OTTAWA, June 26, 1918.

Mr. COMMISSIONER BOYCE:

The facts generally are set forth in the Judgment of the Assistant Chief Commissioner. The Applicant seems to have been treated with very little consideration by the railway company, and to have relied largely, and perhaps too much, upon the verbal representations of the officers of the railway company as regards the crossing in question.

The railway company, cutting through the applicant's farm, took land to the amount of 4.97 acres, for which they have paid Mr. Atkinson \$2,750, or at the rate of \$553.72 per acre.

As stated in the judgment of the Assistant Chief Commissioner, the railway passes between Mr. Atkinson's house and his barn, separating several hundred acres of meadow land from the barn and stables, cutting off almost entirely, at any rate rendering most difficult, access to the stables and barn for cattle, and the general purposes incident to the farm business, upon which the applicant depends for a living.

The damage done by the severance was very serious, far more serious by reason of the contour of the ground than is usual in these crossings. The railway company contends that the price paid for the land taken was a liberal one, and it was urged at the hearing at Vancouver that the substantial sum was paid to meet the additional inconvenience caused to the applicant by the severance. The applicant has thirty head of cattle, and, as stated before, the barn is on the west side and he has 300 acres of land on the east side.

It is also contended that the applicant is precluded by the terms of his agreement dated 19th May, 1910, from making any claim to crossing. There is no authority whatever for such a contention. On the contrary, and by the terms of the same agreement, the company agrees to make "reasonable provision for a crossing." It is clear in my opinion, from the facts stated in the judgment of the Assistant Chief Commissioner, and elucidated at the hearing, that no reasonable provision such as the company agreed to make was in fact made for a crossing.

Provision for a crossing reasonable with respect to conditions and the nature of the applicant's business, the care of his cattle and the general management of his farm was what the railway company agreed to provide, and was, in law, bound to provide, and the railway company has not provided it, but is asking the applicant to accept, and has imposed upon him, an alleged crossing which is merely a difficult means of communication and which involves continual and daily deprivation and injury to those rights which, prior to the traversing on his land by the railway company, he enjoyed, as owner of the fee, and which rights were necessary and incidental to the carrying on of his business as a farmer, and in the enjoyment of his holding.

So far as the consideration which was paid by the railway company to the applicant being a large one is concerned, there is no actual merit in Mr. MacNeill's contention at the hearing that this so called large consideration compensated for the injury caused by lack of access, owing to severance. It is not justified in any way, either by the circumstances themselves, or by the agreement, or by subsequent statements.

In his letter to the Board under date of January 8, 1918, about this matter, Mr. MacNeill plainly states that "the reason for such a large payment was that the strip of land cut through Mr. Atkinson's orchard and took a great many of his fruit trees," etc., and that in view of those circumstances the consideration was fixed at what was otherwise an exceptionally high figure.

It is, therefore, quite plain that no importance or significance whatever can be attached to the fact that the railway company paid \$2,750 for what land they took. They took, against the will of the owner, by right of eminent domain, practically the most productive and ornamental part of the applicant's farm, and in so doing made a separation or severance which inflicted serious injury to the whole of the remaining land and generally to the complainant's business.

Certainly the compensation provided for was not, in my opinion, inadequate to the actual damage done, and in addition thereto, and by the same agreement which provided for it, the railway company agreed to make a "reasonable" crossing, so that so far as the agreement itself is concerned, if the Board has to consider this agreement, the complainant has not got what he was promised and what the agreement calls for, and which, in my opinion, he is now entitled to have.

At the hearing the Assistant Chief Commissioner, on page 1130, Vol. 282, said, with reference to this case, and after examination on the ground, "it is undoubtedly a place where an overhead 'crossing' should have been located originally. There is over twenty feet of a cut in the rock, a man goes up and down by steps that are actually made, instead of a bridge across, which, undoubtedly, I think the railway should have put in at the beginning." He adds "but, you made an agreement with him and you paid him I think a substantial price."

If, as stated by the Assistant Chief Commissioner at the hearing, and after an examination on the ground, it was his opinion that the crossing should originally have been an overhead crossing, which "undoubtedly the railway company should have put in at the beginning," then, even by reference to the agreement that is the "reasonable crossing" which the applicant was promised by the railway company in the agreement.

The applicant asserts that when he signed this agreement he was promised a crossing at a grade of not more than 5 per cent. He gets one at about 19 per cent. It is true that when at the hearing the Assistant Chief Commissioner propounded these terms to Mr. MacNeill, they were not admitted, but, at the same time they were not denied, only evaded.

Whether such promise was made or not makes no difference in this case, because this Board is not bound by an agreement between the parties, even when the agreement had not provided for crossing.

It is a well settled rule that this Board is not bound by private agreements between parties.

For the reasons above I think it is fairly clear that if the Board is to look at the agreement, as the railway company urges us to do, the applicant is there more strengthened than weakened in what it contains.

In *Lusty vs. Pere Marquette Ry. Co.* 21 C.R.C. 93, (File 27838) the judgment of this Board was under very similar circumstances, that "a provision in a deed of lands taken for right-of-way by a railway company, that the consideration is to include full compensation and indemnity for all damages or injury to the property by reason of the railway, does not constitute a relinquishment of the right to a farm crossing over the railway lands," and in a considered judgment in that case the Assistant Chief Commissioner directed the railway company to make the crossing at its own expense.

I also refer to Harris v. Great Northern Railway Co. 21 C.R.C. 193. Very much in accord with the necessities of this case was the judgment of the Board rendered by the Assistant Chief Commissioner in Lalande v. Canadian Northern Railway, 21 C.R.C. 194. Following Cockerline and Guelph and Goderich Railway Company, 5 Can. Ry. Case 313.

In that case the railway was carried across the farm on a high embankment and in crossing over it would be inconvenient for cattle to get to pasture.

(In this case the crossing renders it well nigh impossible for cattle to pass between the meadows and the barn and stable.)

In the case above referred to, as in this, a makeshift crossing has been given by the railway company. It was held there as insufficient to meet the necessities of the situation, and the railway company was ordered to provide a suitable crossing at its own expense.

I have had an opportunity of reading the judgment of the Assistant Chief Commissioner delivered in this case, and regret that I cannot agree with his reasons or conclusions.

The Assistant Chief Commissioner, having found, as he does, that in locating the railway and providing for a grade crossing instead of an overhead crossing at the place where the rock cutting is 22 feet deep, *the engineer was unfair to Mr. Atkinson, and should have had an overhead crossing*, in my opinion decides the issue in accordance with my view, and in accordance with the facts before us.

I am unable to agree that there is anything in the agreement in writing which is referred to which in any way effects, to the prejudice of the complainant, his right to a reasonable crossing which he was promised by the writing referred to even if that is to be looked at.

This is a case of very great hardship to the applicant, and it is clear that unless relief is afforded to him by an overhead crossing, as is recommended by the Engineer of this Board, and which can be built at an expense of about \$700, and which will offer substantial relief to the applicant, in the carrying on of his business, he will suffer continuing damage and injury, which it is not proper either with regard to the justice of the case or well settled precedent, that he should be called upon to bear.

The applicant has for some time and with vehement complaint oft repeated, endured the inconvenience and hardships imposed upon him by the railway company. I am of opinion that he is entitled to relief under the circumstances. The applicant was promised and was entitled by law to a reasonable crossing. He has not been accorded that, and in my opinion, nothing done by him has had the effect of forfeiting his right to it.

I would make an Order that the railway company construct, at its own expense, the overhead crossing recommended by the Engineer of this Board, work to be completed first of October, 1918.

OTTAWA, June 27, 1918.

MR. COMMISSIONER GOODEVE:

I have read the Judgment of the Assistant Chief Commissioner, and also of Commissioner Boyce. They both agree that an overhead crossing would have been the proper solution; and they are also in agreement as to the jurisdiction of the board to deal with the question of a crossing notwithstanding any agreement made between the applicant and the railway company.

While it is true the board has held that under certain conditions it is not bound by private agreement between the interested parties, nevertheless, the board has always taken cognizance of, and rightly so, the terms and conditions set forth in any agreement made between the parties, and given effect to the equity in such agreements.

In this case the question of the construction of the agreement is material, and both judgments have relied upon it in the conclusions arrived at.

The original agreement, together with plan attached thereto is now on file. This agreement was made on the 19th day of May, 1910, and under its provisions two crossings were to be provided for complainant:

1. A road crossing between Lots 222 and 225.
2. A foot crossing 4 foot in width with 4 foot gates across the right-of-way.

Both shown on the plan annexed thereto.

The plan, as well as the description in the agreement, makes clear exactly where these crossings were to be constructed.

It is to be noted further that in the release clause of the printed form of this agreement the following words are struck out, namely:

"Such occupancy, and of the construction maintenance and operation of a railway over the land."

and substituted therefor are the words:

"By reason of the severing of such lands from the other lands of the vendor or otherwise injuriously affecting such other lands by the exercise of the statutory powers of the party of the second part."

So that when Mr. Atkinson signed this agreement he knew the kind of crossings he was to obtain, and he also knew that he was being paid for the inconvenience and loss that he might suffer by the severance of these lands.

As pointed out in both the judgments above referred to, an unusually high price per acre was paid for this land.

Commissioner Boyce, in his judgment, quotes an extract from letter of A. H. MacNeill, solicitor for the railway company, dated January 8, 1918, and gives it as an explanation for the high price paid; but, he did not quote the complete extract and left out what, in my view, is the essential point at issue in this contention. His quotation is as follows:

"The reason for such a large payment was that the strip of land cut through Mr. Atkinson's orchard and took a great many of his fruit trees, etc."

the part of the quotation left out being:

"Besides cutting out the barn and outbuildings from his low land where his cattle were pastured."

Undoubtedly, the latter is the essential part and was so looked upon by both parties to the agreement, as shown by the fact that in the agreement itself, while no mention is made of the orchard, the damage for the severance of land is clearly set forth has shown above where printed portion of agreement was amended to cover this particular point.

A further fact might be mentioned that as far as the Board is aware no complaint was made with regard to the crossings provided as per terms of agreement until June 1, 1917, some seven years after the date of the agreement.

It is true that Mr. MacNeill on behalf of the railway company, in his letter of January 8, 1918, offered to bear a portion of the cost of the proposed overhead crossing, but this was in consideration of the Municipality joining in the application and abandoning the present public road crossing and diverting it to the proposed overhead crossing. The Municipality on being approached, refused to bear any portion of the cost or to take any action in the matter, claiming that it was a private matter in which Mr. Atkinson only was interested. Mr. MacNeill, on being informed of the attitude of the Municipality, withdrew his offer claiming that as Mr. Atkinson was fully compensated at the time of purchase, the cost of the proposed crossing should be borne by him alone.

I agree, as stated in Commissioner McLean's memorandum to the Chief Commissioner of February 25, 1918, that Mr. MacNeill's point is well taken.

Under these circumstances, I concur in the conclusion arrived at by the Assistant Chief Commissioner that this application should be dismissed.

The Chief Commissioner concurred.

Ottawa, July 11, 1918.

Application of the National Elevator Company, Limited, of Winnipeg, Man., for a ruling of the Board in the matter of absorption of switching charges by railway company in cases where car of grain is shipped from applicant's elevator at Port Arthur, on the C.N.R., and then switched over to the C.P.R. road and billed to Cartier for orders, the applicants paying a stop-off charge and then re-billing the car to Montreal or Quebec as destination.

File 6713.156.

JUDGMENT.

Mr. COMMISSIONER GOODEVE:

This complaint was heard at Ottawa on October 29th last, when judgment was reserved.

Mr. Lanigan, who appeared on behalf of the Canadian Pacific Railway Company, argued that when a shipper whose grain is situated on the Canadian Northern tracks at Port Arthur, consigns his grain to Cartier "for orders" instead of direct to its ultimate destination, he is doing so for his own purpose and convenience; that Cartier being an exclusive C.P.R. point is not competitive and, therefore, notwithstanding the fact that the final destination may be to some common point, the railway company is not compelled, under the Board's General Interswitching Order, to absorb the whole switching charge, his contention being that clause 2 of General Order No. 11 is permissive in its nature.

On the other hand, the shipper's contention is that Cartier or Capreol are stop-off or reconsigning points, and are not the destinations since the car goes forward on the same billing from Cartier or Capreol to the point of final destination, and, therefore, that the railway company's contract is not completed until the car is delivered to its final destination; that if this point of destination is a competitive point, then the switching charge should be absorbed by the railway company just the same as though the car had originally been billed direct to the point of final destination.

In order to understand the Interswitching Order in its application to the point at issue, I think it is necessary to read it in connection with the tariff provisions under which the shipments for reconsignment are made.

Rule 1 of C.P.R. Tariff C.R.C., E. 2646, under the caption of "Absorption of Switching Charges on competitive carload traffic" reads as follows:—

"In order that the Canadian Pacific Railway may equalize terminal facilities of other lines, that is, received freight from and deliver to industries or team tracks located on other lines at the same through charge as assessed by those lines of railway for similar service, the Canadian Pacific Railway will, on all carload shipments of freight on which it receives a road haul, pay connecting lines switching charges at point of origin or at destination, or both, subject to any of the following conditions:—

(a) Where the traffic may be handled by the line performing the switching service, either over its own rails or in connection with other transportation companies, at the same rates as in effect via the Canadian Pacific Railway or jointly with its connections.

(b) Where tariffs of other railways, reaching same station, at equal rates with Canadian Pacific Railway, provide for the absorption of switching charges of the line upon which the industry or team track is located."

It is to be noted that in this tariff the Canadian Pacific Railway company definitely states that it will, on all carload shipments of freight under conditions as above set out, pay connecting line switching charges at point of origin or at destination, or both.

Under the above tariff provision, a car originating at any elevator on the Canadian Northern Railway at Port Arthur, which is there delivered to the Canadian Pacific Railway consigned to a destination competitive with the C.N.R., would be subject to absorption by the Canadian Pacific Railway of the amount of the Canadian Northern switching charge; but the shipper, for reasons of his own, having elected to bill to Cartier "for orders," under Mr. Lanigan's contention, Cartier not being a common point he loses his right to demand the full absorption of the switching charge, notwithstanding the fact that the final destination may be a point common to both railways.

In C.P.R. Tariff C.R.C. E. 3280, as amended by supplement No. 28, is the following with reference to stop-off arrangements on grain, grain products and flaxseed (carloads) from Fort William, Port Arthur and Westfort, Ontario, consigned to Cartier, Ont., "for orders":—

"All rail shipments of grain, grain products and flaxseed (carloads) may be consigned to Cartier, Ont., "for orders," subject to the following regulations:—

1. Shipments must be way-billed on Cartier, Ont., at current Montreal rate. They must not be accepted consigned to a point beyond, with instructions to "stop off at Cartier for orders."

2. Way-bills must show the name and address of the individual or firm to be advised on arrival of the car at Cartier.

3. On arrival of the car at Cartier, unless furtherance instructions have been received, agent will notify by telegram the individual or firm interested (at his or their expense) and request orders for disposal.

4. Instructions as to furtherance must be addressed to the agent, Canadian Pacific railway, Cartier, Ont. They must specify:—

- (a) The initial and number of car.

- (b) The destination to which to be forwarded, and the name and address of the individual or firm to be notified.

5. Shipments consigned to Cartier for orders will be forwarded to final destination at the through rate from original point of shipment, plus the following tolls:—

- (a) "Stop-off" charge, \$1 per car.

- (b) "Car demurrage, etc., etc."

It will thus be seen that shippers, under Clause 5 of this tariff, have the right to consign their shipments to Cartier "for orders" to be forwarded to their final destination at the through rate from the original point of shipment subject to certain charges and conditions as therein set forth. There is no dispute as to the charges mentioned therein.

It is quite clear from the above that Cartier is not the final destination, and that the shipper is entitled to the through rate from the original point of shipment to final destination. It seems to me that the through rate must carry with it the same privileges as though it was originally billed through direct to destination. The shipper having decided to exercise his right under the tariff to bill to a reconsigning point, should not be penalized by having to pay that portion of the switching charge which he would not otherwise have to pay.

C.N.R. Tariff E. 1210, page 3, contains similar provisions for reconsignment shipments under the head of "Shipments Consigned to Capreol for Orders."

I think that under the stop-off privilege, as above quoted, the line to Cartier or Capreol should be considered merely as a portion of the through line over which the traffic is routed, and not as a governing factor in connection with interswitching charges. The railway companies, for their own convenience, have selected these as the

points to which the shipper must consign his grain in order to obtain the stop-off privilege. While the points named are exclusive to each railway company, a point common to both railways, such as Sudbury or North Bay, would have suited the shipper equally as well, and in the latter case there would have been no question as his right to the absorption of the interswitching charge.

I am, therefore, of the opinion that under the provisions of the tariff, as they at present exist, grain consigned to Cartier or Capreol "for orders," whence it is ordered to a final destination common to the Canadian Pacific or Canadian Northern, or their connections, is entitled to the same absorption of interswitching charges as if it had been consigned through from Port Arthur or Fort William to its ultimate destination.

The Deputy Chief Commissioner and Commissioner Boyce concurred.

OTTAWA, November 15, 1918.

The CHIEF COMMISSIONER:

In my opinion this application ought to be dismissed. The facts of the case are fully set out in Commissioner Goodeve's judgment. As matters now stand, grain can be shipped from any elevator on the Canadian National Railways at the head of the lakes to Capreol, with the privilege of being held at that point for orders for furtherance to destination. In like manner, all grain in elevators served by the Canadian Pacific Railway Company may be forwarded to Cartier with the like privilege.

Grain so forwarded has not to be interswitched. No unnecessary rail service has to be performed, and at certain periods the head of the lake terminals of both systems are busy and the grain movement most intensive.

The present issue, as shown by Commissioner Goodeve, relates to cars moved off the terminals of the one line to the tracks of the other for the eastern movement with the right of stop-off:

It is undoubtedly in the public interest that the grain movement be as large as possible and the bulk of the traffic carried when advantage can be taken of the lower water rates. During the winter season the rail movement is more largely used, and during periods of inclement weather, when the costs of operations are great; unnecessary rail services should not then be made.

One of the great items of expense in operation are terminal costs, and inter-switching is a terminal movement.

The applicants ship grain stored on the Canadian National System from the head of the lakes by the Canadian Pacific to Cartier. Under the terms of the General Order, one-half the cost of what is really an unnecessary service in Port Arthur has to be paid by the road enjoying the line haul, in this case the Canadian Pacific. The applicants desire that the company be ordered to absorb the whole cost of the inter-switching movement. This has never been done. Doubtless the applicants thought it to their advantage to ship to Cartier, thinking that buyers at Canadian Pacific destinations might be the more readily obtained, and that the larger field was open to them from that point.

Are the applicants entitled to this benefit without paying anything for it? Is there any real reason why the Canadian Pacific should be compelled to take from the Canadian National System traffic that properly belongs to it? No sufficient reason, as I see it, exists. I have no doubt, however, that the Canadian Pacific would take the traffic whenever that company thought it in its interest to take it, and the cost of obtaining it was not too great.

Shippers to Capreol have open to them without extra charge not only Canadian National Terminals, but also the terminals of the Grand Trunk. No real hardship will result if the application be dismissed and the practice of the past adhered to.

Joint terminals common to both systems at the head of the lakes would result in doing away with all unnecessary switching, and would be, as I see it, by far the best solution of the situation at the head of the lakes. My view has been that such action

would be in the interests of the carriers as well as of shippers, as the carriers would save much unnecessary interswitching which is carried on at a large expense. I have strongly urged joint terminals on the systems, and the practical feasibility of joint terminals is now being considered and worked out by them.

As I see it, the board is not obliged to encourage this unnecessary terminal service by granting this application. While the ultimate destination may be common to both systems, and therefore a competitive point, that fact is not known when the movement to the stop-off point is arranged. It is because the shipper is uncertain where he desires ultimately to send the car that the stop-off right is necessary. His election is not between two systems both running from the point of origin to the point of destination, but between a movement to one stop-off point as against the other.

The tariff is one which on its face is applicable only to a competitive situation and not to this particular movement, as Cartier and Capreol, far removed as they are the one from the other, cannot be looked upon as competitive destinations or competitive points, as contemplated by the Act.

Again, the Canadian National Railways do not absorb the whole cost of inter-switching on movements off Canadian Pacific tracks from Port Arthur to Capreol, although ultimately forwarded to a common destination; so that the absorption of the whole toll would result in a lower rate than that charged by the competing system. As I see it, that competition which renders necessary the competitive tariff is the competition effective at the time the initial shipment is made, and not the selection of a competitive point subsequently determined by a shipper long after it is possible that the car should be carried on any line other than the line on which it then is.

It is impossible to regard a movement out of a stop-over point as competitive. The carrier already has the business, and I fail to see why it should then be obliged to consider it as still on its rival's rails.

The Board's Order relating to competitive business is merely permissive. It enables a railway company, if it desires, to obtain business from a competitor at the expense of absorbing the whole cost of obtaining business from its competitor's tracks should it so desire. It is necessary, as without that permission this rebate would be unlawful. As it is a right and not an obligation, it is for the Company and not for the Board to say whether the whole interswitching cost should be absorbed, subject always that the right, if exercised, must be exercised without discrimination. No discrimination here exists. The movement at the stop-off point differs from the usual movement, in that the place of destination is unknown, and the fact that the ultimate destination may or may not be competitive unascertained.

There is no discrimination between shippers. The like privileges are open to all, and all shippers to a stop-off point receive the same treatment. I would dismiss the application.

OTTAWA, August 1, 1919.

Application of the Township of Godmanchester re culvert under G.T.R. in connection with Kedugh discharge.

File No. 9473.15.

JUDGMENT.

THE DEPUTY CHIEF COMMISSIONER:

On the 5th of August, 1918, the municipality of Huntingdon, in the Province of Quebec, homologated a *procès-verbal* ordering the Grand Trunk Railway Company to erect and maintain a culvert for the flow of a watercourse known as the "Smith discharge," at the line between lots Nos. 207 and 209 of the township of Godmanchester, at mile post 64.90, G.T.Ry., Montreal Division, 4th District.

The railway having neglected to obey this Order, the municipality asks for relief

The Railway Company's contention is that it being subject to the Dominion Railway Act, and not to the Municipal Code of Quebec, it can only be ordered to do such work as asked for, by the Board of Railway Commissioners.

The point is clear and has frequently been disposed of by the Board.

Section (251) of the Act provides that when drainage proceedings are taken under Provincial Acts, the drainage laws of the Province apply, as a rule, to the lands of the company upon, or across which, such drainage is required.

It provides also that no drainage works shall be constructed across the railway of the company until the character of such works, or the specifications or plans thereof, have first been submitted to and approved by the Board.

There is no choice to be made. For the protection of all parties interested, the railway crossing of all drainage works taken under Provincial Acts, must be submitted to the Board for approval.

The *procès-verbal* concerned, not being set aside by the local courts, constitutes the law which has reference to the crossing of the railway right of way.

The plans submitted have been approved by the Board's engineers, and the usual Order should go. There being no previous Order or direction of the Board made with respect to drainage of the lands in question, the crossing is to be installed at the Company's expense, within thirty days of the date of the Order.

OTTAWA, July 22, 1919.

Commissioners Goodeve and Boyce concurred.

Applications of the City of Montreal, under Section 247 of the Railway Act, for an Order directing the Canadian Pacific Railway Company's Telegraph and the Great North Western Telegraph Company to place their lines and wires underground on certain streets in the said city.

File Nos. 26460-1 and 26460-2.

JUDGMENT.

THE CHIEF COMMISSIONER:

This matter has been before the Board more than once. It is accompanied with a good deal of difficulty, the Electrical Commission of the City of Montreal having been engaged in the work of building ducts for the purpose of accommodating the wires of the telegraph and other companies. Ducts in part have been built. The work has been done under legislation of the Province of Quebec, and provision is made for partial compensation to the companies. The compensation allowed does not reimburse the companies for the cost to which they are put.

From an operating standpoint, the benefits to the companies of underground as against overhead construction are negligible. There is not an appreciable saving in cost of operation. There is a decrease in the cost of maintenance, but that decreased cost will not amount to nearly as much as the expense which underground construction will entail.

Notwithstanding this, in my opinion, it is cheaper for the companies to use the ducts provided by the Commission than it is for them to build ducts for themselves.

As the application sets out, the city desires poles and wires at certain defined areas to be placed underground. Placing the poles and wires underground is a distinct civic improvement, and not of company benefit. The districts where the city desires to have

underground construction are districts which appear to me to be reasonable. They are districts more or less closely built up and improved. The property is of such a class that, in view of the city's attitude in getting other overhead construction off the streets, it would be reasonable for the Board to exercise its jurisdiction and order underground construction.

The matter has been held for a long time owing to the fact that while the work is of a desirable character, it was not of such a character as to make it advisable that it should be preceded with during the war, when all efforts of necessity had to be subordinated to the great task before the country, and no money spent or labour employed except where necessary. These conditions have since disappeared, and the matter ought now to be dealt with.

If the case is one which ought to be approached from the standpoint of benefits to the companies on the one hand, or the municipality on the other, practically the whole cost must be placed upon the municipality. The question is as to whether or not the matter can be so regarded.

Under the Act, these public utility companies whose operations are essential to the general public have the right to erect and maintain their poles and wires on public highways. This right is clear. After giving much consideration to the subject, I have come to the conclusion that the question cannot be regarded from the standpoint of benefit. The companies, while enjoying the statutory right, obtained without cost; the fee of the property is in some cases vested absolutely in the municipality, in other cases in the Crown, with the whole jurisdiction over the highway as such in the municipality.

It would, of course, be impossible to put all wires underground, but it undoubtedly is highly desirable in the congested areas of large urban centres that wires should be buried and the streets kept as free from all impediment as possible. The operations of the firemen are rendered the easier, and the street is more free and unobstructed for vehicular and pedestrian traffic.

I am of the opinion that in all cases where city development has reached such a stage as the streets in question, to render it reasonable and advisable that the improvement should be made and all city wires and poles are being placed underground, the Board should make an order requiring the underground construction to be made, and that the costs of this underground construction should be placed upon the company in cases where it itself does the necessary work, or, in cases when it is done by the municipality and ducts rented from the municipality, upon such terms or rental as may be agreed upon between the parties.

The underlying principle I think applicable is this, that while the right is given to the companies to use municipal property, that right, where urban development such as indicated has taken place, ought to be exercised with the least possible disadvantage and loss to the local municipality, so that the urban municipality, subject as these streets are to the burden of overhead construction, ought not to be penalized by having to indemnify the company against the cost of necessary underground construction.

I am quite aware that in the long run the adoption of this principle will entail added costs to the companies, but it is better that these added costs should be paid by those benefited by the companies' service, rather than by the general taxpayers, many of whom have but little use for the companies' services.

OTTAWA, August 1, 1919.

The Deputy Chief Commissioner and Commissioner Goodeve concurred.

ORDER No. 28623.

In the matter of the applications of the City of Montreal, in the Province of Quebec, hereinafter called the "Applicant," under Section 373 of the Railway Act, 1919, for an Order directing the Canadian Pacific Railway Company's Telegraph and the Great North Western Telegraph Company to place their lines and wires underground in that part of the territory of the said city comprised between Craig, Commissioners, St. Lawrence, and McGill Streets, inclusive, and on Victoria Square.

Files Nos. 26460-1 and 26460-2.

FRIDAY, the 1st day of August, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon hearing the applications at the sittings of the Board held in Ottawa, May 1, 1917, in the presence of counsel for the applicant and the telegraph companies, and what was alleged; and upon reading the further written submissions filed,—

It is ordered: That the Canadian Pacific Railway Company's Telegraph and the Great North Western Telegraph Company be, and they are hereby, directed forthwith to place their lines and wires underground in that part of the territory of the city of Montreal, in the province of Quebec, comprised between Craig, Commissioners, St. Lawrence, and McGill streets, inclusive, and on Victoria Square; the cost of the work to be borne and paid by the said telegraph companies.

W. B. NANTEL,
Deputy Chief Commissioner.

Applications of the Canadian Pacific Railway Company and the Corporation of the County of Wellington, in the Province of Ontario, for an Order permitting the restoration of bridge No. 416 at Harriston, Ont., on the Teeswater Subdivision, with the clearance that existed prior to its reconstruction.

File No. 5568.5.

JUDGMENT.

The CHIEF COMMISSIONER:

As intimated at the hearing, no case was made out by the company justifying the maintenance of a steep grade at this bridge. The claim made by the company that the grades on the highway descending towards the point in question were approximately 11 per cent on the northwesterly side and 9 per cent on the southwesterly side, while the existing grade of the bridge was but 8.2 per cent on the northwesterly side and 7.4 per cent on the southeasterly side is not well taken.

The claim that the highway grades were, if anything, improved in connection with the construction of the original bridge was amply disproved as the ground at the point in question was practically level.

All that the county of Wellington asks for is that the grade should be made 6 per cent. The only question that was held for consideration was the matter of railway clearances. The application for a decreased clearance was much pressed by the railway company.

After giving careful consideration to the matter, I am of the opinion that this is not a case of the character where the Board would be justified in departing from the statute. After all, the only reason why the company desires to depart from the statutory clearance is that it will be compelled to pay an exorbitant sum of damages owing to necessary land interference. There ought to be no more exorbitant award in this case. The adjacent property is not of high value. In any event, the point taken is not one which, in my view, ought to afford of itself a reason why the terms of the statute should be departed from.

An order will go for the reconstruction of the bridge with grades not exceeding 6 per cent, and providing for proper clearances.

OTTAWA, August 1, 1919.

Commissioner Goodeve concurred.

Application of the Canadian Pacific Railway Company, for an Order rescinding Order of the Board No. 27688; dated September 16, 1918, in the matter of stopping the company's train No. 821 at Oakville, Ont.

File No. 27563.2.

JUDGMENT.

MR. COMMISSIONER GOODEVE:

The Chief Commissioner, before being sworn in as Minister of Finance, dictated a memorandum in regard to this application, but became functus officio, before having completed the same. In my opinion this memorandum covers the case completely. It is as follows:—

“The company's application being opposed by the municipality of Oakville and by a large number of residents, the application was listed for hearing at Toronto on Thursday, the 5th day of June, 1919, when judgment was reserved with a view of ascertaining whether it would not be possible to arrange for an alternative train. The necessity for the order, which is now complained of arose owing to the fact that prior to its making, the Grand Trunk Railway ran a train leaving Toronto at 6.05 p.m. This train carried with it sleepers, and ran through to Suspension Bridge, making connections with the New York Central Railway for New York. The Grand Trunk advanced the departure of this train from 6.05 to 5.45 p.m. On the complaint of Oakville, the matter was taken up when it was found that the New York Central had advanced the the bridge, so that the Grand Trunk was obliged to forfeit either the American departure of its train with which the Grand Trunk train made connection at connections or discommode those of the travelling public that required to go to New York, and particularly those from points intervening between Hamilton and Suspension Bridge, who would have been denied any proper train service to New York and intervening points, had the connections not been maintained.

“The Canadian Pacific had a train leaving Toronto for New York at 7.15 p.m. This is a time which suited the Oakville residents who desire to work up to, or after six o'clock, in Toronto. The Canadian Pacific has running rights from Toronto to Hamilton over the line of the Grand Trunk. Under the terms of this agreement the Canadian Pacific is not permitted to engage in local business and if local passengers are carried in that territory has to account to the

Grand Trunk for their fares, and is only permitted to retain 25 per cent of the receipts from the tickets. The statutory duty resting on the Grand Trunk to maintain a reasonable service is not relieved in any way by the agreement with the Canadian Pacific Railway; but as already stated, the local business is expressly reserved to the Grand Trunk, notwithstanding these connections in view of the fact that the country was at war, that the service was not one with which the Canadian Pacific was not ordinarily called upon to perform and was unremunerative, and in view of the fact that everything should be done to aid the country's war effort and the efficiency of the workers, the order was made against the Canadian Pacific and was accepted by the company under these conditions. A further circumstance which rendered this action more reasonable was the Grand Trunk had discontinued running their train out of Toronto at 11.45 p.m., which gave an Oakville connection. This discontinuance is proper it was in the country's interest, and was for the purpose of conserving coal and locomotive power at a time when such action was very necessary. The result, however, was that residents of Oakville, working in Toronto, if they missed the 5.45 train could get no later train. It was under these circumstances that the Canadian Pacific submitted to stopping their train, although the strict legality of the order was not admitted, the Grand Trunk 11.45 train is now operated.

"The Canadian Pacific complains that their 7.45 train is their heavy New York train and that as a result of the Oakville stop connections, the train has run late to the inconvenience of a great mass of the travelling public. The company also says that it costs them more money to stop the train than the receipts they incur of this traffic. The company claims that the delay entails a loss of seven or eight minutes. The train may well have, as claimed, an average of ten coaches while the number may run sometimes to 14 or 15. This seems to be an excessive claim for delay. The more usual estimate for loss of time owing to a stop, including the decrease of speed in approaching the station, the stop and start and the length of time required to reach high speed, is five minutes. Although I believe this to be the fact, the delay has proved at times serious to the proper movement of the train in view of others (which inevitably arise from time to time on the run). The number of passengers carried by the train is shown by the company to be as follows:—

'In November daily average number of passengers set down at Oakville was 7, December 8, January 8, February 10, March 11, April 12.'

"The Canadian Pacific has accepted on this train the Grand Trunk tickets, which are not issued at the usual rate, but at a specially low commuter's rates, which the Grand Trunk has extended to Oakville. In view of the fact that the Canadian Pacific only receives a fraction of these earnings, low as they are, and that the emergency justified the previous order passed it is inequitable that the company should be forced to continue the stop or that much larger number of passengers who pay for their transportation at a much higher rate, should be inconvenienced and their connections jeopardized. This result is, on its face, so clear that the only reason why judgment was reserved was to see if some further arrangement in justice, could be required from the Grand Trunk. The Grand Trunk's present service is as follows:—

<i>Westbound.</i>				<i>Eastbound.</i>			
No. 11	due	Oakville.. . .	7.17 A.M.	No. 82	due	Oakville.. . .	7.28 A.M.
No. 101	"	"	8.46 A.M.	No. 94	"	"	8.01 A.M.
No. 81	"	"	12.32 P.M.	No. 106	"	"	8.57 A.M.
No. 83	"	"	2.15 P.M.	No. 78	"	"	12.07 P.M.
No. 103	"	"	4.41 P.M.	No. 6	"	"	3.25 P.M.
No. 87	"	"	6.10 P.M.	No. 92	"	"	6.06 P.M.
No. 89	"	"	6.25 P.M.	No. 12	"	"	6.13 P.M.
No. 7	"	"	12.32 A.M.	No. 18	"	"	7.35 P.M.
				No. 108	"	"	9.27 P.M.

"In view of the fact that it has been found impossible to set back the running time of train No. 89, which leaves Toronto at 5.45, and in view of the further fact that train No. 7, which formerly left Toronto at 11.45 has been restored, I am of the opinion that the Board cannot consistently order any further service to or from Oakville. The trains are reasonably spaced and are sufficient to accommodate the number of passengers travelling. I am of the opinion that for the above reasons, that the order should be made as asked."

I agree with the conclusions of the ex-Chief Commissioner, as set out above, and think that they should be adopted as the judgment of this Board, and an order issue in accordance therewith granting the application of the C.P.R.

OTTAWA, August 8, 1919.

Commissioner Boyce concurred.

ORDER NO. 28625

In the matter of the complaint of the Board of Trade of the City of Toronto, in the Province of Ontario, against the proposed new "Tariff of Terminal and Switching Charges," filed by the Express Traffic Association of Canada:

File No. 4214-601

FRIDAY, the 1st day of August, A.D., 1919.

SIR HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Toronto, June 24, 1918, the Complainant and the Canadian Manufacturers Association being represented at the hearing, and what was alleged; and upon the report of the Chief Traffic Officer of the Board—

It is ordered: That the special tariff of terminal and switching charges, C.R.C., No. E.T.-13, issued by the Express Traffic Association of Canada, on file with the Board under file No. 4214-601, be, and it is hereby, approved.

A. S. GOODEVE,
Commissioner.

ORDER No. 28630.

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for authority to continue in effect the allowance made to the Canada Sugar Refining Company, Limited, of 1½ cents per 100 pounds, on account of cartage at Cote St. Paul, Montreal, as published in Tariff C.R.C. E-3369.

File No. 6713.165.

FRIDAY, the 1st day of August, A.D. 1919.

SIR HENRY L. DRAYTON, K.C., *Chief Commissioner.*

HON W. B. NANTEL, *Deputy Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, March 18, 1919, the applicant company, the Grand Trunk and Canadian National Railways,

and the Canadian Manufacturers' Association being represented at the hearing, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused, and that the applicant company's Tariff C.R.C. No. E-3369, in so far as it provides for a cartage allowance of $1\frac{1}{4}$ cents per 100 pounds to the Canada Sugar Refining Company, Limited, at Cote St. Paul (Montreal), be, and it is hereby, disallowed; the General Order of the Board No. 252 to remain in effect.

W. B. NANTEL,
Deputy Chief Commissioner.

ORDER No. 28635.

In the matter of the complaint of the Merchants Grain Company, Limited, of Fort William, Ont., hereinafter called the "Complainant," that it was charged an advance of 2 cents per 100 pounds on grain from Fort William by reason of embargoes placed by the Canadian Pacific Railway Company, which prevented the complainant shipping prior to March 15, on which date the advance rates took effect.

File No. 28900.

FRIDAY, the 1st day of August, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Fort William, March 5, 1919, the complainant and the Canadian Pacific Railway Company being represented at the hearing, and what was alleged; and upon reading the further submissions filed,—

It is ordered: That the complaint be, and it is hereby, dismissed.

A. S. GOODEVE,
Commissioner.

GENERAL ORDER No. 269.

THURSDAY, the 7th day of August, A.D., 1919.

In the matter of the Regulations regarding plans and specifications required to be filed with the Board, dated January 1919, being standard rules for the construction of highway, farm, wire, and pipe crossings, and general requirements for interlocking appliances, at rail level crossings, junctions, and drawbridges.

Case No. 4704.1.

A. S. GOODEVE, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon its being presented to the Board by the Grand Trunk Railway Company that the pay of Inspectors for inspecting all crossings should be increased to \$11 a day instead of \$3, as provided in the case of wire crossings by the General Order of the Board No. 267, amending the "Standard Conditions and Specifications for Wire Crossings," the Canadian National Railways and the Canadian Pacific Railway Company concurring in the above representations—

It is ordered: That the said Regulations of the Board regarding plans and specifications required to be filed with the Board be, and they are hereby, amended by striking out the words "three dollars" after the word "exceed," in the sixth line of paragraph 7, page 14, and before the word "per," and substituting therefor the words "eleven dollars"; and by adding after the word "applicant," in the sixth line of the said paragraph 7, the words "such payment to cover both wages and expenses."

A. S. GOODEVE,
Commissioner.

GENERAL ORDER No. 270.

THURSDAY, the 7th day of August, A.D., 1919.

In the matter of the Order of the Board No. 10453, dated May 3, 1910, dealing with the location of markers on the passenger trains of the Grand Trunk Railway Company; and General Order No. 127, dated July 6th, 1914, directing that cabooses of all railway companies subject to the jurisdiction of the Board be equipped with marker sockets as provided by the Order:

Files Nos. 13455 and 13455.2.

HON. W. B. NANTEL, *Deputy Chief Commissioner.*S. J. McLEAN, *Commissioner.*A. S. GOODEVE, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon its appearing that railway companies have marker sockets at the corners of the roof on some of their passenger cars, in addition to the lower position; upon the report of the Chief Operating Officer of the Board, that, in his opinion, and with

a view to standardization in equipment and practice, the requirements as to passenger cars and cabooses should be the same—

It is ordered as follows:—

1. When passenger cars and cabooses are equipped with marker sockets in the lower position (the said lower position to be at such elevation as will permit of lamps and flags being placed therein from the platform or floor of the car without the use of steps), markers shall be carried in such lower sockets.

2. All passenger cars and cabooses hereafter constructed shall be equipped with marker sockets in the lower position.

3. All passenger cars and cabooses now in use, not equipped with marker sockets in the lower position, shall be so equipped on or before May 1st, 1920.

4. The said Order No. 10453, dated May 3, 1910, and General Order No. 127, dated July 6, 1914, are hereby rescinded.

W. B. NANTEL,
Deputy Chief Commissioner.

ORDER No. 28633.

In the matter of the application of the Grand Trunk Railway Company of Canada, hereinafter called the "Applicant Company," under Section 188 of the Railway Act, 1919, for approval of the location and details of shelter proposed to be erected at Yonge Mills, near Brockville, Ont., on the 6th District of the Applicant Company's railway, as shown on the plans on file with the Board under file No. 29495.

FRIDAY, the 8th day of August, A.D. 1919.

A. S. GOODEVE, *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon the report and recommendation of the Chief Operating Officer of the Board, and the consent of the council of the township front of Yonge, filed,—

It is ordered: That the location and details of the applicant company's proposed station at Yonge Mills, near Brockville, in the province of Ontario, on the 6th District of its railway, as shown on the plans on file with the Board under the said file No. 29495, be, and they are hereby, approved.

A. S. GOODEVE,
Commissioner.

ORDER No. 28636.

In the matter of the application of the Board of Trade of Herbert, in the Province of Saskatchewan, for an Order directing the Canadian Pacific Railway Company to stop two passenger trains daily each way at Herbert and Morse, between Swift Current and Moosejaw, in the Province of Saskatchewan.

File No. 29260.

FRIDAY, the 8th day of August, A.D. 1919.

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of an Inspector of the Board, and reading what is filed in support of the application and on behalf of the Railway Company,—

It is ordered: That the Canadian Pacific Railway Company be, and it is hereby, directed forthwith to stop its No. 3, westbound, passenger train daily, and its No. 4, eastbound, passenger train daily at Herbert, in the province of Saskatchewan.

A. S. GOODEVE,
Commissioner.

ORDER No. 28627.

In the matter of the application of the Express Traffic Association of Canada, on behalf of all the express companies subject to the jurisdiction of the Board, for approval of the Express Classification for Canada, No. 4, C.R.C., No. ET-14.

File No. 4397.44.

MONDAY, the 11th day of August, A.D. 1919.

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

The said classification having been filed in accordance with the Judgment of the Board dated July 17, 1919,—

It is ordered: That the said Express Classification for Canada, No. 4, C.R.C., No. ET-14, be, and the same is hereby, approved.

A. S. GOODEVE,
Commissioner

ORDER No. 28644.

In the matter of the Order of the Board No. 18870, dated February 18, 1913, directing the Great Northern Railway Company, operating the Vancouver, Victoria and Eastern Railway and Navigation Company to include in its summer time table a suburban service, effective from June 15 until October 15 in each and every year, until further order, as particularly set out in the said Order.

File No. 19737.

MONDAY, the 11th day of August, A.D., 1919.

A. S. GOODEVE, *Commissioner*.J. G. RUTHERFORE, C.M.G., *Commissioner*.

Upon hearing the matter at the sittings of the Board held in Vancouver, June 6, 1917, the New Westminster Board of Trade and the Great Northern Railway Company being represented at the hearing, and what was alleged; and upon reading the further submissions filed, and the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the said Order No. 18870, dated February 18, 1913, be, and it is hereby, amended to provide for the adoption of the following schedule by the Great Northern Railway Company, Sundays, only, namely:—

Southbound.	Station.	Northbound.
9.40 p.m.	Vancouver, B.C.	9.20 p.m.
9.58 p.m.	Burnaby, B.C.	9.02 p.m.
10.10 p.m.	New Westminster, B.C.	8.50 p.m.
10.22 p.m.	Townsend, B.C.	8.35 p.m.
10.30 p.m.	Colebrook, B.C.	8.27 p.m.
10.37 p.m.	Crescent, B.C.	8.20 p.m.
10.41 p.m.	Ocean Park.	8.15 p.m.
11.00 p.m.	White Rock, B.C.	8.00 p.m.
11.10 p.m.	Blaine, Wash.	7.50 p.m.

A. S. GOODEVE,

Commissioner.

ORDER No. 28662.

In the matter of the application of the Temiscouata Railway Company, hereinafter called the "Applicant Company," under Section 334 of the Railway Act, 1919, for approval of its Standard Passenger Tariff, C.R.C. No. 72, on the basis of four cents a mile:

File No. 1010.3.

THURSDAY, the 14th day of August, A.D. 1919.

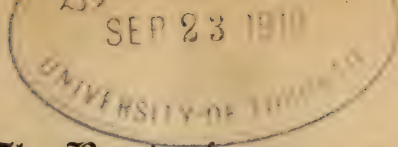
A. S. GOODEVE, *Commissioner*.J. G. RUTHERFORD, C.M.G., *Commissioner*.

Upon the report and recommendation of the Chief Traffic Officer of the Board,—the said Standard Passenger Tariff having been filed on the basis permitted by the Board in its Order No. 28620, dated July 31st, 1919—

It is ordered: That the applicant company's said Standard Passenger Tariff of Maximum Mileage Tolls, C.R.C., No. 72, dated to become effective August 25th, 1919, be, and the same is hereby, approved; the said tariff, with a reference to this Order, to be printed in at least two consecutive weekly issues of the *Canada Gazette*.

A. S. GOODEVE,

Commissioner.



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The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. IX

Ottawa, September 15, 1919

No. 13

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Application of the Montreal Tramways Company, under section 227 of the Railway Act, for leave to cross the three tracks of the Canadian Pacific Railway Company running between Atlantic and Beaumont avenues, in the city of Montreal, province of Quebec, in order to construct and operate a double track on Park avenue from Atlantic to Beaumont avenues, in accordance with contract between the city of Montreal and the Montreal Tramways Company.

File 12912.3.

JUDGMENT.

The CHIEF COMMISSIONER:

This application was heard in Montreal on the 30th of June last. I intimated at the hearing that the operation of street cars at this point would appear to be extremely dangerous. A view of the locus but confirms that opinion.

The application for running on the level ought to be refused. The district is one, however, which sooner or later ought to have street railway accommodation. The city will never be able to settle for land damages, or the acquisition of land, cheaper than at the present time, and while an immediate construction, in view of the city's financial position, is perhaps not to be thought of, it well may be that the city will see the advantage of now obtaining the necessary land, and any appropriate order, when it desires, might well go.

Under the Board's well settled practice, the city being junior to the railway, the cost, of course, is on the city. This practice is all the more justified by the legislation of 1909, which places upon the railway companies the costs of grade separations which are made over railway tracks which were subsequently placed on existing highways. Cases are not few where the whole necessity of grade separation results from a greatly increased highway use, rather than from any unduly large or increased railway traffic.

So as to reduce the cost as much as possible, the railway tracks at this point should be as few as a proper service can permit.

OTTAWA, August 1, 1919.

The Deputy Chief Commissioner and Commissioner McLean concurred.

ORDER No. 28712.

In the matter of the application of the Montreal Tramways Company, hereinafter called the "applicant company," under section 252 of the Railway Act, 1919, for leave to cross three tracks of the Canadian Pacific Railway Company running between Atlantic and Beaumont avenues, in the city of Montreal, in order to construct and operate a double track on Park avenue from Atlantic to Beaumont avenues, in accordance with the contract between the city of Montreal and the applicant company, all as shown on the plan No. 823-P.F., dated February 6, 1919, on file with the Board under file No. 12912.3.

TUESDAY, the 2nd day of September, A.D. 1919.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon W. B. NANTEL, *Deputy Chief Commissioner.*

Upon hearing the application at the sittings of the Board held in Montreal on the 30th day of June, 1919, in the presence of counsel for the applicant company, the Canadian Pacific Railway Company, and the city of Montreal, and what was alleged; and upon reading the further written submissions filed, and the reports of the Chief Engineer of the Board,—

It is ordered: That the application be, and it is hereby, dismissed.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 28693.

In the matter of the application of the National Elevator Company, Limited, of Winnipeg, Man., for a ruling of the Board in the matter of absorption of switching charges by a railway company in cases where a car of grain is shipped from the applicant's elevator at Port Arthur, on the Canadian National Railways, and then switched over to the Canadian Pacific Railway and billed to Cartier for orders, the applicant paying a stop-off charge and then re-billing the car to Montreal or Quebec, or other common destination.

File No. 6713.156.

FRIDAY, the 15th day of August, A.D. 1919.

Hon W. B. NANTEL, *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, October 29, 1918, in the presence of counsel for the Canadian Pacific and the Canadian National Railways, and what was alleged,—

It is declared: That, under the provisions of the tariff now in effect, grain consigned to Cartier "for orders," whence it is ordered to a final destination common to

the Canadian Pacific and Canadian National Railways, or their connections, is entitled to the same absorption of interswitching charges as if it had been consigned through from Port Arthur or Fort William to its ultimate destination.

W. B. NANTEL,
Deputy Chief Commissioner.

ORDER No. 28680.

In the matter of the Order of the Board No. 22995, dated November 23, 1914, directing the Grand Trunk Pacific Railway Company to erect, maintain, and operate a station to be located on the south side of the main line of its railway, opposite the block of land between Oak and Ash streets, shown on the plan of the town-site of Prince George, in the province of British Columbia, dated July 20, 1914, marked "A," on file with the Board under file No. 21418, and requiring detail plans of the said station to be filed with the Board for its approval before the 15th day of January, 1915, and the station erected and put in operation by the 1st day of June, 1915.

File No. 21418.

WEDNESDAY, the 20th day of August, A.D. 1919.

A. S. GOODEVE, *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Whereas, owing to the exigencies of the war and the state of the railway company's finances resulting therefrom, the requirements of the said Order No. 22995, dated November 23, 1914, were not enforced.

And whereas it now appears that the company is in a position financially to proceed with the erection and maintenance of the said station,—

It is accordingly ordered: That the Grand Trunk Pacific Railway Company file with the Board, within thirty days from the date of this Order, detail plans of the station directed by the said Order No. 22995 to be erected, maintained, and operated; the said station to be completed and put in operation on or before the 31st day of December, 1919.

A. S. GOODEVE,
Commissioner.

ORDER No. 28728.

In the matter of the application of the Canadian National Railways, hereinafter called the "applicant company," for approval of plan dated February 18, 1918, showing the location of the third class station directed by the Order of the Board No. 27696, dated September 16, 1918, to be erected by the applicant company at Durban, Man., on file with the Board under file No. 13411.

WEDNESDAY, the 27th day of August, A.D. 1919.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application, and on behalf of the residents of Durban, and the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the proposed location of the applicant company's third-class station at Durban, Man., as shown on the plan dated February 18, 1918, on file with the Board under said file No. 13411, be, and the same is hereby, approved; the work to be completed by October 1, 1919.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 28708.

In the matter of the application of the State Elevator Company, Limited, of Winnipeg, Man., hereinafter called the "applicant company," for a refund of the demurrage charges made by the Canadian Pacific Railway Company on grain at Keewatin, Ont

File No. 1700.187.

FRIDAY, the 29th day of August, A.D. 1919.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the application at the sittings of the Board held at Winnipeg, on the 3rd day of March, 1919, the Canadian Freight Association being represented at the hearing, no one appearing for the applicant company, and what was alleged; and upon the report and recommendation of the Chief Traffic Clerk of the Board,—

It is ordered: That the application be, and it is hereby, dismissed.

S. J. McLEAN,
Assistant Chief Commissioner

ORDER No. 28717.

In the matter of the application of the Express Traffic Association of Canada on behalf of the Canadian, Canadian National, and Dominion Express Companies, for approval of a special tariff on cream in cans with or without jackets, to be charged by the said companies, separately, between points east of and including Fort William, Ont.

File No. 4214.55 Part 3.

FRIDAY, the 29th day of August, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon its appearing that the said tariff provides rates five cents per can lower than formerly in effect, which rates do not include wagon service; with the option to the consignee of requiring wagon delivery by the Express Companies at an additional charge of five cents per can, subject to notice to that effect by the consignee as set out in the tariff,—

It is ordered: That the said Tariff C.R.C. No. ET-672, published to take effect September 1, 1919, be, and the same is hereby, approved.

And it is further ordered: That the Order of the Board No. 14594, dated August 21, 1911, be, and the same is hereby, rescinded.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 28713.

In the matter of the application of the Canadian Pacific Railway Company for an order rescinding the Orders of the Board Nos. 790 and 793, dated, respectively, November 28 and 30, 1905, providing for interswitching at Lindsay.

File No. 1397.

SATURDAY, the 30th day of August, A.D. 1919.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application, and on behalf of the Grand Trunk Railway Company, and the report and recommendation of the Chief Traffic Officer of the Board, and its appearing that the General Interswitching Order No. 252, dated October 26, 1918, applies to interswitching at Lindsay,—

It is ordered: That the said Orders of the Board Nos. 790 and 793, dated, respectively, November 28 and November 30, 1905, be, and they are hereby, rescinded.

S. J. McLEAN,
Assistant Chief Commissioner.

OCT 7 1919

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. IX

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No. 14

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Application of the Brockville Moulding Sand Company, Limited, of Montreal, for an Order directing the Grand Trunk Railway Company to construct a siding at a point two miles west of Brockville, Ont., into Mrs. Bressee's farm.

File 26691.18.

JUDGMENT.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Application is made by the Brockville Moulding Sand Company, Limited, of Montreal, for an order directing the Grand Trunk Railway Company to construct a spur for the applicant company to serve its property on the Bressee farm, two and one-half miles west of Brockville, said farm being situated on lot 22, first concession of the township of Elizabethtown.

Objection is made by the Grand Trunk to the construction as asked for on the grounds that the siding involves a break in the main line between stations at a point opposite the Bressee farm, that the proposed connection is on a very busy part of the line and runs off a curve, and that in addition it is on a 1 per cent grade descending with the current of traffic. It is proposed by the railway that instead of the connection as asked for a siding leading from the connection with the company's tracks at the west end of Manitoba yard and extending parallel and adjoining the eastbound main line for a distance of about one mile be constructed. The matter of the engineering features has been looked into on the ground by the Board's Chief Engineer, who reports as follows:—

“While I was making an inspection of the main line of the Grand Trunk Railway on June 11, I looked into the matter of the application of the Brockville Moulding Sand Company for an order directing the Grand Trunk Railway to construct a siding two miles west of Brockville.

“The Grand Trunk took exception to this application on account of cutting their main-line track. I might say that in my opinion it is not an objectionable place to cut a track, because the point is a trailing point in the direction of traffic. There are two slight curves in the vicinity but they have very little effect on the view. I would certainly recommend that the point of connection be protected by signals at least 1,000 feet each way from the connection, and when the switch was open these signals would be at danger.

“I made an estimate of continuing a siding from the Brockville yard, a distance of 1½ miles, and omitted one undercrossing of the B. & W. Ry. I think my estimate was in the vicinity of \$50,000 or \$60,000. I do not think this expenditure is warranted as against cutting the track.”

Subsequent to the hearing, letters were received from Mr. A. C. Hardy protesting against any siding being allowed to cross the road in question. Mr. Hardy, in his protest, said:—

“A new roadway has just been built by the township, county and railway, as your records will show, for the purpose of eliminating two level crossings, and it is quite necessary that any siding from the Grand Trunk must cross this new road which is being built at a cost of some five or six thousand dollars, besides which sum, twenty-five thousand dollars is being spent to assist in eliminating the above crossings as well as another more important one. I think it would be a serious mistake by such an example to more or less nullify that work that is being done, and the principle it sets, by permitting these people their siding. The work in any case, I understand, is costing some thirty thousand, whereas the whole property owned by the company has been offered for sale for six or seven thousand, to say nothing of building up the whole crossing again.”

The matter was allowed to stand so that it might be taken up with the municipality of Elizabethtown, whose position is set out in a resolution passed by it:—

“And whereas application has been made by the Brockville Moulding Sand Company, Limited, to run a spur or siding across the said new roadway on the grade:—

“Therefore be it resolved:

“That this council does hereby respectfully protest to the Board of Railway Commissioners for Canada against the installation or construction of any new line of railway across the said roadway on the grade, this roadway being the only main access of the territory on the second concession in this district.

“The council feels that the township must be placed in a very anomalous position when after spending a large sum of money, both on the road in question and to a much larger extent on their works eliminating railway crossings in the same district, when before the work has been finished a new line of rails shall be laid on the grade crossing this railway.”

The matter has stood further for negotiations between the railway and the applicant. These have not taken the matter any further.

At the hearing, evidence was submitted by the applicant's solicitor setting out that a great deal of the moulding sand used in Canada had been imported from the United States. A large deposit of moulding sand is located on the property in question, which it is impossible to develop without a siding. It was submitted that negotiations as to the sale of the commodity had taken place between the applicant and a concern in Flint, Mich., which was prepared to take 5,000 carloads at a rate of \$1.35 per ton; and it was stated that this would mean about \$600,000 worth of business for the railway. No exception was taken by the railway to the statements as to the volume of business involved. It, however, reiterated its position as to its objections to a break in the main line.

As bearing on the nature of the moulding sand deposits and their extent, the following letter from Hyde & Sons, contractors' and builders' supplies, foundry supplies, etc., Montreal, to the applicant has been filed with the Board:—

“In reference to the quality of the Brockville moulding sand, beg to advise you that I have visited the sand deposits and find that the moulding sand will average, in my estimation, approximately four million tons. The sand is of an exceptionally good quality, and compares very favourably with the Albany moulding sand deposits. The sand runs in grades from 00, 0, 1, 2, 3.

“If you are able to deliver this sand on the cars in a prompt manner, and at the same prices that it is possible to purchase Albany sand, we believe that you have one of the best propositions in Canada.

"We have had Mr. Runchey, who is a practical moulder, and the chief representative of one of the best-known foundry supply houses in Canada, at the deposits at Brockville on the 18th instant, and examine the moulding sand deposits with myself, and he was as enthusiastic as myself about the quality of the same, and with the exceptionally large tonnage of sand at the deposits.

"Since taking up the quality of the Brockville moulding sand with the foundry men of Canada, we have had inquiries from all over the country, from all the brass, aluminium and iron foundries.

"We are of the firm opinion that if you can make shipment, sales of Brockville moulding sand should at least amount to 150,000 tons per annum.

"Kindly advise us promptly if you are in a position to make shipment by rail, as we desire to advise our clients at an early date."

The industry proposed is a valuable one and under ordinary circumstances it would appear that no special objection would be taken to the crossing of the road as proposed. The Board's Chief Engineer, who has looked into the situation on the ground, advises that there are no difficulties from the standpoint of a clear view at the point in question.

The diverted road, which the siding, if granted, would cross, is one which was directed as a result of the judgment of the Board which issued April 5, 1917, and Order No. 26031, of April 17, 1919, which issued thereafter.

The material facts regarding the situation as set out in the above judgment referred to are as follows:—

"The Board's Chief Engineer, Mr. Mountain, reports that the construction of the subway and the diversion of the three highways as shown on the plan prepared by the county engineer, dated September 8, 1916, on file with the Board could be carried out for \$23,025. A copy of the plan has been submitted to the railway company. I have visited the location and examined the three road crossings in question. The concession road crossing which is the more westerly of the two that are suggested to be closed and a diversion constructed south of the railway is one of the most dangerous railway crossings I have ever seen. Approaching the tracks from the east one is going down hill almost parallel to the railway and a view of a train approaching the crossing from the east is shut off by a rock-cut. The middle crossing on the side road is not so dangerous and the highway is unimportant; but, if the concession road was diverted the side road should also be diverted as the one diversion would serve both roads. The railway is double-tracked over these crossings. The Lynn Road crossing is a dangerous one because the view of any one approaching from the north is shut off on both sides by the rocky formation of the ground. Particularly is a view of a train approaching from the west cut off, because in addition to the rocks on the side of the highway the railway is in a rock-cut. Approaching from the south, the view in both directions is better, but there is some obstruction to the view of trains from the west due to the rock-cut. The highway on the north side of the track is higher than the track."

What is involved in the present application is different from what was involved in the original decision which led to the construction of the diverted road. There, there was a heavy, frequent, fast traffic, both freight and passenger, moving over the crossings in question. Here, what is asked for is a switching movement which can be so controlled as to minimize any element of inconvenience arising.

While it is to be regretted that it is necessary to carry the siding across the diverted road to handle the traffic in question, there is no other way available of handling it; and in the general interests the opening up of the deposit of moulding sand in question should be allowed. At the same time, conditions should be incorporated which will fully take care of the situation.

As recommended by the Chief Engineer, the point of connection should be protected by semaphores placed 1,000 feet on each side of where the main line is cut; this will be connected up with the switch and derail on the siding, and when the switch is open these signals will be at danger. The cost of this protection will be at the expense of the applicant. The cost is estimated at \$2,000. The switch with 100-pound rail and all material equipment is estimated at \$1,000, and it is estimated that \$100 will cover the proper planking of the crossing for the new road.

The Moulding Sand Company shows on the plan a siding about 1,500 feet long on their own property. This siding, is, of course, common to both schemes, whether a separate track is built from Brockville or whether a siding is allowed from a cut in the main line. This siding is estimated as being worth about \$4 a running foot, with 80-pound rail. The total estimate of cost is thus placed at \$9,100.

The applicant company should deposit to the credit of the Board of Railway Commissioners for Canada, in some chartered bank in Brockville, the sum of \$9,100 to await further order, being the sum estimated as necessary to defray all expenses in connection with the construction and completion of said spur.

In the event of any dispute arising as to the expense, same is to be referred to the Board. In the event of the work costing more or less than the above sum, such difference is to be adjusted by the Board.

The railway company is to rebate or refund to the applicant company, its successors or assigns, \$1 per car from the tolls charged by the railway company in respect of the carriage of traffic to the applicant company over the said spur until the said sum of \$9,100 more or less has been paid by the railway company to the applicant, its successors or assigns.

Whatever protection, if any, may at any time in the future be found necessary by the Board must be provided and maintained at the expense of the applicant company, its successors or assigns. The Board's Operating Department will take up the question of arranging the operation on the siding so that the switching of the traffic across the highway will be dealt with at such time or times as to cause the minimum of inconvenience to the highway traffic.

The disposition now made is without prejudice to any application which may at any time be launched by the municipality in regard to the operation or location of the spur.

September 4, 1919.

Deputy Chief Commissioner Nantel, Commissioners Goodeve and Boyce concurred.

Application for leave to terminate the siding agreement between the Canadian Pacific Railway Company and the Vancouver Ice and Cold Storage Company, Limited.

File 20130.

JUDGMENT.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

This matter was before the ex-Chief Commissioner when his term of office as Chief Commissioner terminated. He left the following unfinished memorandum dealing with the facts involved:—

"The main application was heard at the sittings of the Board held in Vancouver, and under the Board's judgment the removal of the spur was authorized. The removal was made necessary owing to the double track of the Canadian Pacific into Vancouver, which constituted a proper development of the railway facilities. As the spur in question was built upon the company's

statutory right of way and was also so placed as to interfere with the double track, and as the width of the right of way did not permit the laying of another private spur, there was no room on the railway property to accommodate another private siding. While it was held in the original judgment the agreement ought never to have been entered into, in as much as the company's right of way is not property over which the company has full control but is subject to the proper and necessary requirements and exigencies of public traffic and not to private purposes of any particular shipper, so that the company might well have been ordered to have removed the siding or operate it as a public utility, it was felt that the company ought to contribute to the Cold Storage Company's loss. In other words, while the storage company could not obtain any property interests in the railroad right of way, subject as it is to the rights of public transportation, as provided by the Act, nevertheless the agreement had been made and the company, as a party to it, it was felt in fairness ought to bear its share of the loss. This conclusion was come to notwithstanding the fact that the agreement was not a perpetual one, but was one which might be cancelled at any time on the leave of the Board being first obtained. Intimation therefore was given to the company that a fair contribution had to be made by it."

I did not sit in the most recent hearing but have had the advantage of discussing the matter with my colleague Dr. Rutherford, who sat in the matter. The material in evidence and the matter on file have also been considered.

Since the original hearing, as referred to above, occasional service has been given on the main-line track as need has arisen. The position of the railway company in regard to this is set out in the following extract from the evidence:—

"The CHIEF COMMISSIONER: Mr. Peters, can you not go on giving them the same service as you are giving now?"

"Mr. PETERS: We do not like to assume the risk. There is a serious risk involved in placing cars upon the main line. Of course when passenger trains are due to go out it would be impossible. At other times, particularly in foggy weather, there is a risk because those main line leads are used for switching clear of passenger trains, and a car left unprotected is a source of danger to our men and to the cars themselves. That is our difficulty. We placed the cars recently, just as Mr. Burns has stated. I wrote a letter saying that while we did it under special circumstances regarding some Australian mutton coming in, in regard to which they made a strong case by showing the necessity of loading direct—I wrote a letter saying we must not take this as agreeing to place cars, and that we would endeavour to make some arrangement for separate trackage. We have tried to accommodate the ice company but we do not want to continue a practice that we consider dangerous."

Two matters are involved: (1) the question of affording facilities to the Vancouver Ice and Cold Storage Company, hereinafter spoken of as the storage company; (2) the distribution of cost as between the parties.

The plan submitted by the railway has been favourably passed upon by the Board's Engineer, Mr. Kerr, and has been approved by the Board's Chief Engineer. The material portions of his report are as follows:—

"The storage company constructed a permanent building some years ago west of Gorge avenue and adjoining the railway company's right of way on the south side. The trackage serving the building was on the railway company's property, and when the double track service into Vancouver was put into effect the siding agreement between the railway company and the cold storage company terminated. The ground occupied or used by the cold storage company was necessary for the double track.

"I am attaching you herewith blue prints in triplicate showing the alignment of the proposed spur, together with blue prints in duplicate showing the proposal to cut into the storage building for the accommodation of one car. I understand the railway company has secured the necessary right of way outside of their own property to take care of this proposition.

"Some of the members of the Vancouver Ice and Cold Storage Company want a through siding; that is, through the building over Gore avenue and joining up with the track on the east side of the street, which would involve a heavy expense. In the through siding proposition it would, I think, be necessary to have the regulation clearance for the protection of operating trains taken care of, which would lessen storage capacity of the building, and the removal of the elevator.

"I am of the opinion the through siding should not be insisted upon by the storage company at the present time.

"If the spur is constructed in accordance with the plans herewith enclosed, I believe the storage company will get a service that will be very satisfactory, with two switching movements per day, one about noon and the other some time during the night, during the busy season."

The plan has been before both parties. The storage company says:—

"With reference to the plan suggested by Mr. Kerr of only allowing for facilities for one car in place of a siding through the building, the directors have come to the decision to accept this, provided satisfactory arrangements are arrived at as to cost, although it will be a very serious hindrance to the carrying on of the business in delaying loading and unloading of cars, and think that if we accept this limited service and loss of space, in lieu of the trackage which they are discontinuing, that the railway company should pay a large proportion of the cost."

The Board has expressed the opinion in the recent hearing, as well as on an earlier occasion, that in view of the circumstances involved there should be division of cost as between the parties. The railway company makes the following submission:—

"Referring to your letter of 12th ultimo and enclosed copy of report from the Board's Assistant Engineer, Mr. A. T. Kerr.

"The Board will remember the offers made without prejudice by this company to secure an amicable settlement of this matter as outlined in Mr. Beatty's letter to the Chief Commissioner of October 17, 1913. We are still prepared to abide by our final offer, which was to bear five-eighths of the expense involved in connection with this trackage, the ice company to bear the remainder and waive all claims for damage through loss of space. However our officials do not feel justified in increasing our contribution.

"The cost of the work is now estimated at \$14,000, and I would suggest that possibly the best solution of the matter would be that the Board issue an order authorizing the construction of the siding in accordance with the plans referred to by Mr. Kerr, upon the condition that the ice company assume three-eighths of the cost thereof, and deposit that proportion of the amount estimated before the work is undertaken. The order could provide that if the work costs less than the estimate, refund of the difference should be made to the ice company, and that if the cost exceeds the estimate the excess amount should be paid by it to the railway company upon receipt of a properly-certified account."

The storage company takes the position that the offer as made by the railway company is inadequate.

On consideration of all the circumstances involved, I am of the opinion that the offer made by the railway company is a reasonable one.

September 5, 1919.

The Chief Commissioner and Commissioners Goodeve, Boyce and Rutherford concurred.

Application of the Canadian Northern Railway Company for an Order amending Order of the Board No. 19686, dated June 25, 1913, so that the cost of construction and maintenance of the crossing, east of the village of McGee, in the province of Saskatchewan, be placed upon the municipality and the Canadian Town Properties, Limited, successors in title to Messrs. Mackenzie, Mann, and Company, Limited.

File 22502.

Heard at Winnipeg, Man., March 3 and 4, 1919.

JUDGMENT.

COMMISSIONER RUTHERFORD:

By Order of the Board No. 19686, of date June 25, 1913, the Canadian Northern Railway Company was authorized to construct a highway across its line at McGee townsite, in the northwest $\frac{1}{4}$ of section 19, township 29, range 16, west of the third meridian, at its own expense.

The application is for an amending order, so that the cost of construction and maintenance of the said crossing might be placed upon the municipality and the Canadian Town Properties, Limited, successors in title to Messrs. Mackenzie, Mann and Company, the original townsite company, the history of the case being as follows:—

On the 26th day of May, 1913, Messrs. Munson, Allan, Laird and Davis, acting on behalf of Mackenzie, Mann and Company, Limited, applied through the Department of Public Works at Regina, Sask., to this Board, for authority to construct the crossing at McGee townsite, as above described. Application was duly made to the Board by the Department of Public Works, under date of June 16, 1913, but owing to an error and misunderstanding on the part of the deputy minister of that department, the applicant was erroneously described as the Canadian Northern Railway Company.

On June 25, 1913, Order of the Board No. 19686 was issued, and receipt of certified copy thereof duly acknowledged by the solicitor for the Canadian Northern Railway Company on July 4, 1913.

No action was taken under the order and nothing further was done until October 3, 1916, when the village of McGee wrote the Board urging that the crossing in question be constructed, and upon the matter being taken up with the Canadian Northern Railway Company, the Board was advised that the railway company's engineering department had been given instructions to complete the crossing without delay.

On July 11, 1918, the Deputy Minister of Highways for Saskatchewan wrote the Board stating that the crossing as authorized by the Board's Order No. 19686 had not been constructed; that it was urgently required by the village as they had graded the roads up to the crossing on both sides; and asking that the railway company be instructed to attend to the matter as soon as possible.

On August 24, 1918, Mr. Temple, on behalf of the railway company, advised the Board that the crossing would be installed immediately and explained that the application for this crossing was made at the time the townsite plan was filed, but, owing to some error, the copy was not given to the operating department, consequently the matter had been overlooked; promising also to advise the Board immediately the crossing was installed.

On September 3, 1918, the railway company wrote the Board, and for the first time took the ground that the construction of this crossing was a matter of the McGee townsite and that the railway company, having never authorized any one to make application on its behalf for the said crossing, should not be called upon to pay the cost of either construction or maintenance of same.

On October 15, 1918, Mr. Temple, on behalf of the Canadian Northern Railway Company, made application for an order amending order of the Board No. 19686, so that the cost of construction and maintenance of this crossing should be placed on the municipality of McGee and the Canadian Northern Town Properties, Limited, which latter company, he submits, are successors in title to Mackenzie, Mann and Company, Limited, with reference to this townsite, the said Mackenzie, Mann and Company, Limited, being the actual applicants.

On October 25, 1918, Mr. H. S. Carpenter, Deputy Minister of Highways for Saskatchewan, wrote the Board urging that the cost of construction and maintenance of this crossing should not be a charge upon the municipality of McGee; submitting that the placing of the cost on either the townsite company or the railway company was one of the conditions upon which the Department of Public Works for Saskatchewan approved the plans of the townsite of McGee; that the cost should be placed on the railway company, as the townsite company is continually changing hands, having originally been Mackenzie, Mann and Company, Limited; later the Canadian Northern Town Properties, Limited, the controlling company being now the Canada Land and Investment Company, Limited.

On February 18, 1919, Mr. Temple, on behalf of the Canadian Northern Railway System (now Canadian National Railways), again protested against the railway company assuming the cost of construction and maintenance of this crossing, reiterating that the Canadian Northern Railway Company was not the applicant.

The application was set down for hearing at Regina on March 1, 1919, when no one appeared to represent the provincial department of highways.

At a second hearing at Winnipeg on March 3 and 4, 1919, Mr. Evans appeared for the Canadian Northern Railway Company, but no one appeared for either the municipality or the Department of Highways for Saskatchewan.

On March 1, 1919, Mr. Carpenter, Deputy Minister of Highways, again protested to the Board against the cost of construction and maintenance of this crossing being placed on the municipality of McGee. He submitted that Mackenzie, Mann and Company, Limited, were alone interested in securing this crossing as it enabled them to place the townsite on the market and dispose of the lots, and that owing to the close connection between the Canadian Northern Railway Company and the Mackenzie-Mann Company, the Department of Highways strongly holds that the cost should be placed on either of these concerns, preferably the railway company, and that no part of the cost of construction or maintenance should be placed upon the village or the rural municipality.

If the error, for which the Department of Public Works of Saskatchewan is clearly responsible, whereby the Canadian Northern Railway Company was made to appear as the applicant, instead of Messrs. Mackenzie, Mann and Company, who, as owners of the Townsite Company, were the real applicants, is to be ignored, it would appear that the latter company or its present successors in title, should be compelled to install the crossing and provide for its future maintenance; or at least as in the *Canwood case* (see file No. 13272.13) pay the cost of construction, leaving the question of subsequent maintenance to the municipality.

On the other hand the Canadian Northern Railway Company, having, in the first place, accepted service of the order of the Board No. 19686, of date June 25, 1913, and apparently assumed responsibility therefor without question until September 3, 1918, having as late as August 24, 1918, advised the Board that "the crossing will be installed immediately" and "application for this crossing was made at the time the townsite plan was filed, but owing to some error, a copy was not given to the operating department, consequently the matter was overlooked, until receipt of your letters."

In consideration of all the circumstances, including the close relations during the entire period between the railway company and the townsite company, and especially of the small expenditure required and on the special facts involved, the Board would, in my opinion, be justified in insisting on the enforcement of Order No. 19686, as originally issued.

I would, therefore, dismiss the application of the Canadian Northern Railway Company.

OTTAWA, September 8, 1919.

Assistant Chief Commissioner McLean concurred.

ORDER No. 28780.

In the matter of the order of the Board No. 19686, dated June 25, 1913, authorizing the Canadian Northern Railway Company, at its own expense, to construct a highway crossing over its railway at McGee townsite, in the northwest quarter of section 19, township 29, range 16, west 3rd meridian, in the province of Saskatchewan; and the application of the Canadian National Railways for an order amending the said Order No. 19686, so as to provide that the cost of constructing and maintaining the said crossing be borne and paid by the municipality and the Canadian Town Properties, Limited, successors in title to Mackenzie, Mann and Company, Limited.

File No. 22562.

SATURDAY, the 13th day of September, A.D. 1919.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Winnipeg, March 3, 1919, in the presence of counsel for the Canadian National Railways, no one appearing for the other interests affected,—

It is ordered: That the application be, and it is hereby, refused.

S. J. McLEAN,
Assistant Chief Commissioner.

Complaint of the Toronto Board of Trade and Border Chamber of Commerce, Windsor, Ont., against the increased return passenger fares put into effect by the railroads on February 1, 1919.

Files 29124 and 29124.1.

JUDGMENT.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

The railways of Canada have for a considerable period of time provided round-trip passenger rates at a reduction of one-sixth off the sum of the individual rates. This practice has been amended, effective February 1, 1919, by limiting the reduction to 10 per cent.

After filing of complaints, answer and reply, the matter was set down for hearing. It has subsequently stood for further written submissions.

The passenger-rate practice involved developed, no doubt, as a means of building up traffic. In the case of round trips between points served by two or more lines of railway the reduction from the sum of the rates held the traffic inbound to the line on which it had moved out. The practice, however, is general, not being limited to competitive situations.

The Board has approved standard passenger rates which are legally filed and published. The question is raised whether, this having been done, the Board has power, in respect of traffic moving on said rates, to direct that a round trip rate shall enjoy a charge less than the sum held lawful where each portion of the journey is performed as an isolated unit, having no connection with a return.

It is contended, on the one hand, that the round trip rate arrangement is a special rate arrangement, and that where such a rate arrangement has once been put in by a railway the Board has the same jurisdiction it has in regard to special rates generally.

It was submitted in argument that the reduction from the sum of the rates was a concession which it was not obligatory on the part of the railways to give; and that from the standpoint of principle the railways would be within their legal rights in making no reduction. In substance, it was contended that the reduction on the round trip was in the nature of a privilege. Inferentially, this claims an analogy with the "privilege," e.g., of milling-in-transit and analogous arrangements where the railway may initiate or terminate such an arrangement subject to the inhibitions against discrimination.

The jurisdictional point involved is not free from difficulties. The Railway Act is silent on the question of round-trip passenger rates. The special freight rates to which reference is made by way of analogy are concerned with a movement in one general direction. At the same time, the incidents attaching to some of these special rates, e.g., stop-off arrangements of various kinds, are matters which are not specifically set out in the Railway Act. It does not appear necessary, however, to pass on the jurisdictional matter. The main argument was directed to the merits.

The railways contend that the amendment made was justified by increased costs. Reference was made to the freight-rate increases allowed under P.C. 1863, and it was set out that the increases obtained thereunder fell short of the increased costs under the McAdoo award. Reference was made to the additional wage increases which have since been made. It was set out that the increase herein involved was so slight that even with it passenger traffic is "still far from bearing its adequate proportion of the added expenses of the railway companies." While there was contention as to the exact amount of traffic affected by round-trip rates, it would appear from the statistics submitted as to representative points that they affected approximately one-third of the passenger movement. On this basis, the increase represents a diminution from a 16.6 per cent reduction to a 10 per cent reduction on one-third of the traffic.

The material submitted as to costs, both at the hearing and in written submissions, is corroborative of what has been placed before the Board in other connections. The material so submitted was subjected to a careful analysis and criticism by Mr. Marshall for the Toronto Board of Trade.

Giving weight to the criticisms so advanced, it still appears that the railways have successfully borne the burden of proof placed on them and that the Board is not justified in disallowing the round-trip arrangements herein involved.

September 9, 1919.

Deputy Chief Commissioner Nantel, and Commissioner Goodeve concurred.

ORDER No. 28791.

In the matter of the complaint of the Toronto Board of Trade and the Border Chamber of Commerce of Windsor, in the province of Ontario, against the increased return passenger fares put into effect by the railway companies on February 1, 1919.

File Nos. 29124 and 29124.1.

SATURDAY, the 13th day of September, A.D. 1919.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Ottawa, June 10, 1919, the Toronto Board of Trade and the Grand Trunk and Canadian Pacific Railway Companies being represented at the hearing, and what was alleged; and upon reading the further submissions filed,—

It is ordered: That the complaint be, and it is hereby, dismissed.

S. J. McLEAN,
Assistant Chief Commissioner.

Application of Andrew Sagala, Vaudreuil, Que., for an order directing the Ontario Quebec Railway Company (C.P.R.) to replace the existing crossing on the applicant's farm, No. 1891, parish of Vaudreuil, Que., by an overhead crossing, at the expense of the railway company.

File No. 28776.

JUDGMENT.

The DEPUTY CHIEF COMMISSIONER:

This matter first came up before the Board in July, 1918, under the form of an application for an overhead crossing at the applicant's farm over the Canadian Pacific Railway tracks at Vaudreuil, Que. The railway's answer was that all it had to give was an ordinary level farm crossing and this was done at the time the railway was built. The crossing was maintained by the company since then. The company also states that the approaches to the crossing had been built by the complainant himself to suit his purpose. The applicant rejoined that he did not wish either to pay for an overhead bridge nor for the maintenance of the crossing, and that the company should either build a bridge at its cost or maintain the crossing so that it may be used at all times, specially in winter. The company filed in support of its defence a deed passed between the complainant and the Ontario and Quebec Railway—the author of the C.P.R.—whereby the parties did come to an understanding for the construction of a level crossing. Our Engineer reports that the crossing was built in accordance with the deed and that the company has given instructions that the crossing be kept clear of snow in winter. On the 17th December, 1918, the applicant advised the Board that at certain times in winter there is not enough snow on the crossing to allow loads of manure to cross over and that the company should be ordered to keep enough snow on the crossing at all times.

I do not think it reasonable to ask the railway company to abide by this applicant's request. Snow will not stay on the track of a farm crossing during mild weather and the complainant is not in any worse position than any one else. This

is a condition entirely controlled by the elements. Our Engineer reports that the condition of the crossing is in good shape and it seems that the complaint should be dismissed.

An order should go accordingly.

September 18, 1919.

The Chief Commissioner concurred.

ORDER No. 28762.

In the matter of the crossing of the Canadian Pacific and the Canadian Northern, Ont. (Central Ontario) Railways at Central Ontario Junction (Bonarlaw), in the Province of Ontario, and the question of the additional protection to be provided at the said crossing.

File No. 10377.

THURSDAY, the 5th day of September, A.D. 1919.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the hearing of the matter at the sittings of the Board held in Ottawa on Tuesday, the 4th day of February, 1919, in the presence of counsel for the Canadian Pacific Railway Company and the Canadian National Railways, the Brotherhood of Locomotive Engineers being represented at the hearing, and what was alleged; and upon the reports of the Chief Engineer and Chief Operating Officer of the Board,—

It is ordered: That the Canadian Pacific Railway Company be, and it is hereby, directed, at its own expense, to instal distant signals on its line of railway where it crosses the Canadian Northern Ontario Railway at Central Ontario Junction (Bonarlaw); the work to be completed not later than the 1st day of January, 1920.

S. J. McLEAN,

Assistant Chief Commissioner

GENERAL ORDER No. 271.

In the matter of the Canadian Freight Classification and the Express Classification for Canada, and sections 322 and 360 of the Railway Act, 1919.

File No. 25639.

WEDNESDAY, the 10th day of September, A.D. 1919.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

It is ordered as follows, namely:—

1. Any reissue of the Canadian Freight Classification, or of the Express Classification for Canada, or any supplement thereto, or any supplement to the issue of either now in force, shall be submitted in printed proof form for the approval of the Board before it is made effective.

2. Should such proposed reissue or supplement remove any goods from a lower to a higher class, or in any other way add to the cost of transportation of any goods, notice of the submission thereof shall be published by the applicant in the next two succeeding issues of the *Canada Gazette*, in the following form:—

“Notice is hereby given that the.....did on the.....day of....., 19...., submit to the Board of Railway Commissioners for Canada, for its approval, the Canadian Freight Classification (or the Express Classification for Canada) No....., (or Supplement No.....to the Canadian Freight Classification No....., or to the Express Classification for Canada No.....).”

3. (a) Unless, for special reasons, exemption be granted by the Board, the following symbols shall be used in the said proof, and in the approved classification or supplement, namely:—

An asterisk to denote an addition.

A large dot to denote an increase in the previous rating, or charge, or cost of transportation.

A solid triangle to denote a reduction in the previous rating, or charge, or cost of transportation.

A dagger to denote any other change.

(b) Supplements shall show against each increase or reduction a reference to the previously approved item.

4. The application to the Board shall be accompanied by:—

(a) Three copies of the said proof.

(b) The reasons for proposed changes involving increased cost of transportation.

(c) A copy of the notice furnished to the King's Printer for publication in the *Canada Gazette*.

5. One copy of the said proof and of the said notice for publication shall be furnished by the applicant to the following bodies, with the request that fully explained objections, if any, to proposed changes involving increased cost of transportation be filed by them with the Board of Railway Commissioners within thirty days from the receipt of the said proof and notice:—

The Canadian Manufacturers' Association.
The Ontario Grocers' Guild.
The Manufacturers' Association of British Columbia, Vancouver, British Columbia.
The Fruit Growers' Association of Ontario.
The Montreal Chamber of Commerce.
The Boards of Trade of:—
Belleville, Ontario.
Brandon, Manitoba.
Brantford, Ontario.
Brockville, Ontario.
Calgary, Alberta.
Chatham, Ontario.
Collingwood, Ontario.
Cornwall, Ontario.
Edmonton, Alberta.
Fort William, Ontario.
Fredericton, New Brunswick.
Galt, Ontario.
Guelph, Ontario.
Halifax, Nova Scotia.
Hamilton, Ontario.
Kenora, Ontario.
Kingston, Ontario.
Kitchener, Ontario.
Lethbridge, Alberta.
London, Ontario.
Medicine Hat, Alberta.

Montreal, Quebec.
Nelson, British Columbia.
Ottawa, Ontario.
Owen Sound, Ontario.
Peterborough, Ontario.
Port Arthur, Ontario.
Preston, Ontario.
Prince Albert, Saskatchewan.
Prince Rupert, British Columbia.
Quebec, Quebec.
Regina, Saskatchewan.
St. Catharines, Ontario.
St. Hyacinthe, Quebec.
St. John, New Brunswick.
St. Thomas, Ontario.
Sarnia, Ontario.
Saskatoon, Saskatchewan.
Sherbrooke, Quebec.
Stratford, Ontario.
Three Rivers, Quebec.
Toronto, Ontario.
Valleyfield, Quebec.
Vancouver, British Columbia.
Victoria, British Columbia.
Waterloo, Ontario.
Windsor, Ontario.
Winnipeg, Manitoba.
Woodstock, Ontario.

Also, in the case of the freight classification, to the railway companies which are not members of the Canadian Freight Association.

6. Previous orders or regulations of the Board conflicting herewith are hereby rescinded.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 28778.

In the matter of the General Order of the Board No. 119, dated January 31, 1914, and the application of the Michigan Central Railroad Company, hereinafter called the "applicant company," for authority to remove the station agent at Attercliffe, in the province of Ontario.

File No. 4205.216.

SATURDAY, the 13th day of September, A.D. 1919.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the applicant company be, and it is hereby, granted leave, pending further order, to remove the station agent at Attercliffe, in the province of Ontario, subject to and upon the condition that a caretaker be appointed to see that the station is kept clean, and heated and lighted when necessary; and to take care of L.C.L. freight and express shipments.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 28784.

In the matter of the application of the Central Canada Express Company, Limited, under section 323 of the Railway Act, for approval of by-law No. 10, passed at a meeting of the directors of the company on the 8th September, 1919, authorizing C. Hope, assistant superintendent of the company, to prepare and issue all tariffs of tolls to be charged by the company for the carriage of express, on file with the Board under file No. 26465.

THURSDAY, the 18th day of September, A.D. 1919.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the said by-law No. 10 be, and it is hereby, approved, and that the Order of the Board No. 26419, dated August 14, 1917, approving of the said company's by-law No. 7, be, and it is hereby, rescinded.

F. B. CARVELL,
Chief Commissioner.

GENERAL ORDER No. 272.

In the matter of Carriers' liability in connection with outbound freight traffic during interswitching operations:

File No. 6713.158.

FRIDAY, the 19th day of September, A.D. 1919.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Whereas, by Order No. 7562 (General Order No. 41), dated the 15th day of July, 1909, the Board prescribed conditions and limitations to be endorsed upon the forms of bill of lading therein approved for use in Canada; and it having developed that shippers and carriers are not always receiving the protection of the said conditions and limitations during the time when freight, in carloads, is being interswitched by the "terminal carrier" to the "line carrier" under the terms of the Board's General Interswitching Order No. 252, dated the 26th day of October, 1918; and it appearing to the Board that such protection should be provided for,—

It is ordered: That those terminal carriers that do not issue the bill of lading for the entire movement of such freight to its destination, and which are subject to the jurisdiction of the Board, shall give the shipper a local bill of lading on the appropriate form provided for in the said General Order No. 41, covering the movement by interswitching service to the point of transfer to the line carrier that issues the bill of lading to the destination; or, if preferred and in lieu thereof, shall give the shipper what is commonly known as an interline or switching ticket or receipt, which shall contain the words, "received subject to the conditions of the Company's bill of lading, which are made a part hereof."

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 28799.

In the matter of the Order of the Board No. 27910, dated December 3, 1918, directing the Canadian Pacific and the Canadian Northern Railway Companies to construct interchange and storage tracks in the city of Port Arthur, in the Province of Ontario; the interchange tracks to be completed at once, and the storage tracks as and when required:

File No. 26825.13.

MONDAY, the 22nd day of September, A.D. 1919.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

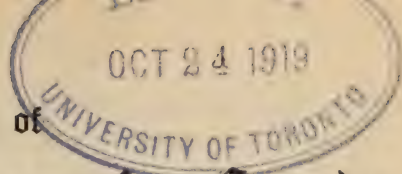
A. C. BOYCE, K.C., *Commissioner.*

Upon its appearing that the said storage tracks, as shown in red on the Canadian Northern Railway Company's plan dated Winnipeg, December 6, 1917, as amended

January 11, 1918, are now required, and should be constructed by the Canadian Pacific Railway Company without any further unnecessary delay.

It is ordered: That the Canadian Pacific Railway Company be, and it is hereby, directed forthwith to proceed with the construction of storage tracks west of a line drawn through the centre of the Saskatchewan Co-operative Elevator Company's plant, as required under the said Order No. 27910, and as shown on the plan marked "A" on file with the Board under file No. 26825.13; such tracks to be ready for use as part of the scheme shown on the said plan of interchange and storage tracks, within thirty days from the date of this Order.

S. J. McLEAN,
Assistant Chief-Commissioner.



The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Ottawa, October 15, 1919

No. 15

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Application of the Canadian Pacific Railway Company for a reconsideration of the matter and the rescission of order of the Board No. 26671, dated October 22, 1917, in connection with switching charges on cars at Drumheller, Alta.

File No. 26582.

JUDGMENT.

Mr. COMMISSIONER GOODEVE:

As pointed out in the memorandum of the Chief Commissioner on file, dated December 17, 1917, Order No. 26671 was issued in accordance with the judgment of myself, concurred in by the Chief Commissioner, based on the evidence as submitted at the hearing in July, 1916, at Calgary.

The C.P.R., in its application as above, asked for a hearing in Ottawa in the last week of November, 1917. The Board, at the time, declined to list the case for hearing, the company having been given an opportunity to file a statement showing the practices which in fact apply in connection with other private sidings and at the coal mines. The company filed its memorandum covering these points, dated at Winnipeg, November 23, 1917. On receipt of this memorandum the whole matter was referred to Mr. Hardwell, the Chief Traffic Officer of the Board, with a direction to make a careful study of the whole situation and submit his report to the Board in light of the above information, as well as previous evidence in the case.

Following this direction, Mr. Hardwell made a carefully considered report on December 5, 1917, in which he recommended for adoption a revised basing scale. Copies of this report, together with copies of the memorandum submitted by the C.P.R., were sent to the different industries affected for their consideration, and they were directed to make any submissions they might desire in writing to the Board.

After these submissions had been received the Chief Traffic Officer made another report under date of July 31, 1919, dealing with the various points raised in the several submissions, and confirming the recommendations made in his original report of December 5, 1917.

In the tariffs disallowed by Order No. 26671, the rate provided for switching cars on private sidings, or spurs, was as follows. For distances up to 1,000 feet no charge was made; for distances over 1,000 feet and not exceeding two miles, an additional charge of \$2 per car was made; and for distances for over 2 miles, 50 cents per mile or fraction of a mile was added to the 2 mile charge of \$2. Distances were reckoned from the head block where the spur leaves the yard lead within the radius of customary switching operations.

Mr. Hardwell's recommendation was as follows:—

“From the entrance to the spur—

“1,000 feet.	Free, as now.
Over 1,000 feet and not over 2,000 feet. . .	\$1 00 per car.
“ 2,000 “ “ 4,000 “ . . .	1 50 “
“ 4,000 “ “ 2 miles.	2 00 “

“This would break up the present first chargeable block into three parts.

“Each mile, or fraction of a mile, over two miles, 50 cents per car in addition to the charge of \$2 as at present.

“If the spur begins outside of the customary switching area, or beyond the yard limit, I propose the assumption that the connection was a voluntary one on the railway company's part in the interest of traffic, and that no further charge ought therefore to be made; in other words, that the reckoning should be from the head-block of the spur in all existing cases, and that for the present purpose all existing connections be assumed to be voluntary. Further, that should the Board require a main line to be cut in the future for private spur construction against the railway company's objections, it should, at the same time, prescribe the extra switching toll, if any, to be charged.

“There are instances where the engine's work ceases at the entrance to the spur, the car proceeding thence by gravity to the plant, where it is blocked, and again from the plant to the main line or lead at the other end. In such instances, of course, no charge should be assessed for unperformed service.”

A consideration of the date that has been submitted since the hearing in Calgary upon which my judgment was based, and Board's order issued, has led me to the conclusion that the Board would now be justified in fixing a limit for free switching and providing a rate basis for switching beyond that limit.

I think the rates and conditions as set forth in Mr. Hardwell's report are fair and reasonable, and should be adopted by the Board. Order to go accordingly.

OTTAWA, August 21, 1919.

MR. COMMISSIONER BOYCE:

I agree that Mr. Hardwell's original report as confirmed by the judgment of the late Chief Commissioner of December 17, 1917, should, with his subsequent memorandum of July 31, 1919, be accepted as the judgment of the Board and be communicated to the parties accordingly.

OTTAWA, August 21, 1919.

Commissioner Rutherford concurred.

Report of Chief Traffic Officer of the Board.

The Canadian Pacific makes application for reconsideration of the judgment of the Board in the complaint of the Premier Coal Co. of Calgary, operating at Drumheller, and rescission of Order No. 26671 of October 22, 1917, on the grounds that as the order is of general application it “results in the upsetting of established practices at other points, and thus causes serious hardships to the railway companies under circumstances which were not before the Board when this (Drumheller) application was heard”

Other similar complaints had for some time been standing for judgment when the Drumheller case was decided.

The C.P.R. is affected by the order at a number of collieries. Its tariff indicates 28, but as 9 of these do their own switching with their own engines, the company is

really affected at 19, or two thirds of the total. The Canadian Northern's tariff shows 12 mines and the G.T.P.'s at which the additional charge is assessed, but whether these companies are relieved of extra engine service we have no knowledge. So far, therefore, as the C.P.R., at least, is concerned it is quite conceivable that if no charge is to be made—and under the order none is being made at present—those coal operators that now do their own extra terminal switching may insist on being relieved of the work, or being made an allowance for their services.

But the extra-terminal switching arrangement still applies to certain other industries, since the order refers to coal mines only. Of such other industries the C.P.R. tariff itemizes 17, of which 4 perform their own switching. As Mr. Gouge, of the Alberta Block Coal Co., took the ground that singling out of the collieries for the extra charge amounted to discrimination, he referred apparently to the Canadian Northern, whose tariff shows no other industries, but it may well be that it has none. The G.T.P., also, shows none and probably for the same reason.

The arrangement in question provides that for switching cars on private sidings or spurs for distances up to 1,000 feet no charge is made; for distance over 1,000 feet and not exceeding two miles an additional charge of \$2 per car is made, and for distances over 2 miles 50 cents per mile, or fraction of a mile, is added to the 2-mile charge of \$2. Distances are reckoned from the head-block where the spur leaves the yard lead within the radius of customary switching operations. (In some cases the spur leaves the main line beyond this radius; this I refer to later.)

At the Calgary hearing the Canadian Northern offered no explanation of the fixture of 1,000 feet as the free service. Testifying in the Rock Springs case at the same sittings, Mr. Lanigan explained that it had been found that 1,000 feet represented the average switch movement in placing cars on industrial sidings or team tracks within a terminal. Mr. Lanigan has since explained that he meant the ordinary terminal; in a large terminal it would be within any section thereof.

Dealing with cost of service; in the Rock Springs case Mr. Lanigan filed a letter dated July 11, 1916, giving the statistics shown in the following first column as representing the 1½ hours' work entailed in the movement of 14,349 feet in each direction and the switching at the mines:—

Coal (1 ton)	\$2 65	\$2 13 (¾ ton).
Lubricants and waste.	0 18.75	0 18
Maintenance of engine.	0 75	0 75
Water (1,500 gallons)	0 12	0 08 (1,000 gal.)
Supervision.	0 38	0 31
Wages.	3 42.75	2 75
	<hr/>	<hr/>
	\$7 51½	\$6 20

Mr. Lanigan produces the current costs for one hour as shown in the second column. Equated, the per cent cost is 24 per cent greater than in July, 1916. The item of supervision is 10 per cent of the first three items.

The ratio of expense per car depends, of course, on the number of cars included in the particular movement over the spur; but it is obvious that, whether the initial yard operation is short or long, the railway company has already absorbed the expense thereof, on the average thousand feet basis, when it has placed the car at the point where the spur begins. It follows that in reckoning the spur length a further thousand feet is covered without charge.

There are instances where the engine's work ceases at the entrance to the spur, the car proceeding thence by gravity to the plant, where it is blocked, and again from the plant to the main line or lead at the other end. In such instances, of course, no charge should be assessed for unperformed service.

After due consideration, I have decided to recommend the adoption of the following revised basing scale:—

From the entrance to the spur—

1,000 feet..	Free, as now.
Over 1,000 feet and not over 2,000 feet.. . . .	\$1 00 per car.
“ 2,000 “ “ 4,000 “	1 50 “
“ 4,000 “ “ 2 miles..	2 00 “

This would break up the present first chargeable block into three parts.

Each mile, or fraction of mile, over 2 miles, 50 cents per car in addition to the charge of \$2 as at present.

If the spur begins outside of the customary switching area, or beyond the yard limit, I propose the assumption that the connection was a voluntary one on the railway company's part in the interest of traffic, and that no further charge ought therefore to be made; in other words, that the reckoning should be from the head-block of the spur in all existing cases, and that for the present purpose all existing connections be assumed to be voluntary. Further, that should the Board require a main line to be cut in the future for private spur construction against the railway company's objections, it should, at the same time, prescribe the extra switching toll, if any, to be charged.

Applying this scale to the Drumheller situation, the Premier Coal Company's tipple would be within the free zone, and the Alberta Block Coal Company's tipple being 1,970 feet from the entrance to the spur, the charge would be reduced from \$2 to \$1 per car. (Exhibit 3, filed by the C.N.R., purporting to give Premier Company's distances, is clearly incorrect, as it does not agree with the blue-print. The length of the spur to the tipple is 954 feet instead of 1,254 feet; to the end of the spur it is 1,254 feet instead of 1,736 feet.)

The Alberta Block Coal Company's representative contended that they were entitled to free switching under their siding agreement. No copy of the agreement was filed by either party. A copy of the C.N.R. form of siding agreement may be found in the Board's file 6770-1. Clause 2 reads as follows:—

“The licensee will during the continuance hereof pay compensation, hereinafter called “rental,” to the company for the use of the equipment and for services of the company's employees in any kind of work on the siding in connection with the licensee's property or business, at the rate of.....dollars per annum, payable in advance on the first day of the month of..... in each year.”

Although the clause read by Mr. Gouge differs in some respects, I believe, as contended by Mr. Evans, it was not intended to cover switching movements after the siding had been constructed. The C.P.R. form is more explicit; it is as follows:—

“That the party of the second part will, during the period for which this agreement remains in force, pay a compensation to the railway company for the use of the said rails, fastenings, and switch materials, at the rate of..... dollars per annum, payable in advance on the first day of the month of..... in each year, the said compensation being hereinafter called “rental,” and will also within thirty days after receipt of a written statement thereof pay to the railway company all expenses of necessary signals, signalmen, protective appliances and any other like expenses at any time incurred by reason of the use of said siding by the party of the second part, and will in like manner pay to the railway company all the cost and expenses which may be incurred by the railway company in maintaining and keeping the said siding in good repair and condition, clear of snow and open for traffic.”

That is to say, the amounts to be filled in in the blank spaces represent the interest on the value of the rails, fastenings and switches furnished by the railway company, the applicant providing the ties and grade at his own expense.

For the position taken by the Interstate Commerce Commission I beg to refer the Board to 34 I.C.C. 609, "Car Spotting Charges."

I may add that owing to the complexity of tracks and the multiplicity of movements involved, varying at different stations and according to the number of cars per movement, it is practically impossible to determine the average cost of switching in terminals, so that figures can be accepted as roughly approximate only.

Respectfully submitted.

(Sgd.) J. HARDWELL,
Chief Traffic Officer.

OTTAWA, December 5, 1917.

Report No. 2 of Chief Traffic Officer of the Board.

The memorandum of the Chief Commissioner dated December 17, 1917, concurred in by Mr. Commissioner Goodeve, elicited response from only six of the colliery firms operating on the lines of the Canadian Pacific. Of these five would not be affected by the adoption of my recommendations so long as their sidings are operated by gravity as at present; consequently the switching charge shown against each such mine becomes active, in the words of the tariff, "only when the Canadian Pacific Railway Co. perform the switching service." If this service is not called for the charge is not imposed and this is admitted. The five firms heard from are the:—

International Coal and Coke Co.
Hillcrest Collieries, Ltd.
West Canadian Collieries.
Franco-Canadian Collieries.
McGillivray Creek Coal and Coke Co.
Rock Springs Coal and Brick Co.

The sixth firm, the Rock Springs Coal and Brick Co., through their solicitors, Johnstone & Ritchie, of Lethbridge, take the position that their siding agreement should not only relieve them of the switching charge, but should entitle them to refund of all money paid for that service. My position, as stated in the report, is that this siding agreement covered construction, maintenance and protection only, and not operation.

They further contend that if they are liable for a charge at all it should be only for the quarter mile over their own siding from the point where it leaves the Elcan gravel pit spur (4.6 miles west of Taber); relying on the words of the signed agreement dated April 11, 1916, to be found on file 25132, reading "desires to have a railway siding built connecting said premises with the said railway." But the switching service to and from the mine is over the gravel spur as well as the mine spur. The plan referred to in the agreement is not submitted; but it is my view that a connection with the Canadian Pacific Railway means with the railway devoted to public use and not a spur built for the railway company's private use. The company's distance, admittedly correct would make the toll \$2.50 according to my report, and this is the rate published in the tariff also.

As regards the submissions from the collieries at Drumheller; it may be pointed out that the Canadian Northern is not a party to the application for rescission of Order 26671. At Drumheller, also, the siding agreement is relied upon to negative any charge whatever for switching. The allegation that the list of long sidings submitted by the Canadian Pacific is incomplete, and that discrimination would therefore result if charges were assessed only against those so listed, is answered in Mr. Beatty's letters of February 27 and April 24, 1918. The last-mentioned letter also withdraws that company's objections to the plan recommended in my report.

I must beg to adhere to my report. If in any instance error has crept in owing to incorrect measurements, rectification ought to be easy if the proper steps are taken.

Respectfully submitted,

(Sgd.) J. HARDWELL,
Chief Traffic Officer.

OTTAWA, July 31, 1919.

NOTE.—The Canadian National has since written the Board as follows:—

“While the recommendations made in Mr. Hardwell’s report do not altogether meet our desires, we will, however, be willing to accept them in order to dispose of this matter.”

ORDER No. 28854.

In the matter of the Order of the Board No. 26671, dated October 22, 1917, made upon the complaint of the Premier Coal Company, Limited, the Alberta Block Coal Company, Limited, and the Midland Collieries, Limited, disallowing the tolls published and filed by the Canadian Northern, Canadian Pacific, and Grand Trunk Pacific Railway Companies for switching, west of lake Superior, freight traffic on which the said companies, respectively, had received, or were to receive, a line haul, the said tolls having been charged because the switch movement exceeded in distance one thousand feet;

And in the matter of the application of the Canadian Pacific Railway Company for an order rescinding the said Order No. 26671.

File No. 26582.

FRIDAY, the 3rd day of October, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon reading the submissions filed, and the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That carriers operating west of lake Superior which may be called upon to perform on long sidings, or spurs, the additional terminal service of switching, by locomotive power, freight which, in the same cars, has been or is to be line-hauled by the switching carrier or a connecting carrier, may, on lawful publication thereof, charge and collect for the said switch movement from or to the entrance to the said siding, or spur, not more than the following tolls in addition to other tolls lawfully chargeable, namely:—

If the distance is over 1,000 feet and not over 2,000 feet.. . . .	\$1 00 per car.
If the distance is over 2,000 feet and not over 4,000 feet.. . . .	1 50 “
If the distance is over 4,000 feet and not over 2 miles.. . . .	2 00 “
And for each additional mile or fraction of a mile.. . . .	50 “

F. B. CARVELL,
Chief Commissioner.

Application of the Quebec, Montreal and Southern Railway Company for permission to increase from 3.45 cents to 4 cents per mile the rate shown in tariff C.R.C. No. 262 as standard passenger fare between all stations on the said Quebec, Montreal and Southern Railway in Canada.

Case 2824.

JUDGMENT.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Application is made for increase in the standard passenger fare of the Quebec, Montreal and Southern Railway Company. The present standard is 3.45 cents. It is desired to increase it to 4 cents. A large amount of statistical detail has been submitted bearing on the condition of revenues and expenses of the railway in question.

At the hearing, information was submitted covering the situation until the end of November, 1918. It seemed proper to let the matter stand until further information, showing the conditions existing during the present year, could be adequately presented. During 1918, there was, as indicated below, a very considerable increase in freight revenues. This was due to war conditions, the item of coal tonnage being a matter of importance. The traffic was not a regular one and it was, therefore, justifiable to have before the Board a situation in which the traffic was more normal, and to consider costs in connection with the handling of such more normal traffic.

The railway has a main line mileage of 191 miles. The application being one relating to passenger fares and concerned with the costs of the passenger traffic, this phase of the situation must have special attention directed to it. At the same time, an analysis of general revenues and expenses is of value as showing the condition of the road.

The railway has not during the last five years or more given any return upon the capital invested in the road. The whole question has been one of whether operating revenues would meet operating expenses. It was stated at the hearing that the railway had not at any time made any return upon the capital invested. This being so, in the analysis which is made all reference is omitted to return on capital invested. That is not to say that the latter is not a legitimate factor to consider in connection with rate matters. It manifestly is a legitimate factor. At the same time, it should be pointed out that the contention of the railway did not direct itself to the matter of returns upon capital; it concerned itself with the allegation that there should be a closer approximation between operating revenues and operating expenses. A statement of the investment in the road and equipment submitted by the railway as of September 30, 1918, gives a total of \$7,554,656, being made up of investment in road, \$5,634,602, investment in equipment, \$1,920,003. Fractional amounts are omitted.

In order to understand the general situation of this line, the period from 1913 is taken. At the hearing, returns were submitted showing the condition by fiscal years down to 1917, and showing an average annual deficit during this period of \$70,000. Figures have also been submitted for the calendar years down to 1918, and detail has been supplied for the first seven months of 1919. In order to have the detail comparable, the following comparisons based on the calendar year are made:—

	1913.	1914.	1915.	1916.	1917.	1918.
Operating revenues... ..	\$406,467	\$397,632	\$349,669	\$429,928	\$561,990	\$786,129
Operating expenses—						
(a) Operating expense... ..	490,372	473,416	460,540	474,464	597,919	787,264
(b) Taxes... ..	8,316	7,874	8,513	7,996	9,024	8,263
Deficit... ..	\$92,221	\$83,658	\$119,383	\$62,532	\$44,953	\$9,398

The result is a deficit on operating revenue amounting to \$402,145 for the period in question, or an average annual deficit of \$37,000. Put comparatively, it cost from

101 cents to earn a dollar in 1918 to 134 cents in 1915. On an average, it cost 113 cents to earn a dollar during the whole period in question.

While in 1918 there was an increase of \$224,139 in operating revenues, this was due to increase in freight revenues, the increase in this item being \$249,474. There was a decrease in passenger revenue. The passenger revenue in 1918 amounted to \$133,015 for tickets and excess baggage. If all services giving a revenue on passenger trains are included, it gives a total of \$154,296. If the first of these headings is taken, 1918 was \$33,696 less than 1917; while if the second is taken it was \$29,525 less. If 1917, which showed the highest passenger revenues in the period in question is omitted, the following averages are available:—

Average ticket and excess baggage revenue, 1913-16	\$145,720
Actual " " " " for 1918	133,015
Average all passenger train service revenue, 1913-16	\$161,026
Actual " " " " for 1918	154,296

As already indicated, a material factor to be considered in the analysis is the question whether with any change in the volume of freight traffic due to a falling off in a commodity movement diverted to the lines of this railway because of war conditions, there thereafter continues increased or increasing costs attributable to conditions arising during the period of the war. The test of this is to be found in the conditions shown during 1919.

An analysis by months from January to July, 1919, the amounts being given exclusive of taxes, gives the following results:—

	January.	February.	March.	April.	May.	June.	July.
Operating revenues	\$66,236	\$53,277	\$38,069	\$40,840	\$37,036	\$45,348	\$44,229
" expenses	71,205	67,112	75,110	68,681	68,109	65,980	61,072
Deficit	\$4,969	\$13,834	\$37,041	\$27,840	\$31,072	\$20,632	\$16,842

The computation as given shows:—

Operating expenses	\$477,272 47
" revenue	325,038 17
Deficit	\$152,234 30

The computation as given above is exclusive of taxes. This being a necessary cost, there should be considered the proportionate amount of taxes chargeable against the seven-month period in question. The taxes during the period 1913-1918 have averaged \$8,331 per annum. Allocating seven-twelfths of this to the period in question would give a sum of \$4,851. Adding this, operating expenses exceeded operating revenue by \$157,085 during the seven-month period in question. Exclusive of allocated taxes, it took in January 107 cents to earn 100 cents of revenue, while in March it took 197 cents to earn 100 cents. The average operating ratio for the period in question was 147 per cent; that is, it cost 147 cents to earn 100 cents. Including allocated taxes for the seven-months period, it cost 148 cents to earn 100 cents.

A large amount of detail was submitted bearing on the increases in labour cost. The Quebec, Montreal and Southern Railway Company has been subject to the same general increases in this respect as other railways in Canada, and it is not, therefore, necessary to pursue this phase of the analysis further. It is further pointed out that the railway involved was, in common with other smaller railways, on a lower scale of wages than the standard lines prior to the McAdoo award; and that the application of this award and the additional wage increases which have since accrued subject the railway to a higher percentage increase than falls on the larger roads.

To understand the significance of the wage and salary cost, the following summary is illustrative; the years 1918 to 1913 as quoted are for years ending June 30; the figures for 1919 being for the seven-month period January-July:—

1919—87 cents out of every \$1 earned went to wages and salary.							
1918—50	"	"	"	"	"	"	"
1917—49	"	"	"	"	"	"	"
1916—52	"	"	"	"	"	"	"
1915—53	"	"	"	"	"	"	"
1914—55	"	"	"	"	"	"	"
1913—50	"	"	"	"	"	"	"

In a computation submitted at the hearing and contained in exhibit 3 as filed by the railway, the returns for the year ending December 31, 1917, which year is one of the best traffic years the railway has had, are analyzed with a view to arriving at the expense per passenger train mile. In substance, the division was made by allocating such items of cost as were directly allocatable to the individual services, the balance being divided on the basis of train mileage. The computation submitted showed that during the period in question, equating mixed-train mileage to the basis of passenger by charging one-third of the mixed-train mileage to passenger mileage, the result was that while passenger business produced 32 per cent of the earnings it required 53 per cent of the train mileage; and on this basis a computation was made that the average earnings per passenger-train mile were \$1.19 as against average expenses per train mile of \$2.11. A similar computation made for the eleven months ending November 30, 1918, gave earnings per passenger-train mile as \$1.63, and set out that the average cost per passenger-train mile was \$2.70.

In the period from January to July, 1919, which for the reasons already set out affords a reasonable criterion of the present condition as to costs, the passenger revenue amounted in round numbers to 28 per cent (28.23) of the total receipts of the railway.

As a rough working measure, it may be expected that the passenger business should meet the same proportion of operating costs as it raises in revenue. This is subject to the criticism that the passenger business may be proportionately more expensive than the freight business. As already pointed out above, the passenger-train mileage for 1917 is taken at 53 per cent of the whole, as compared with 32 per cent of total earnings being derived from passenger business.

If figures submitted to the Board in connection with the recent investigation into the conditions of railway-mail pay, the Canadian Pacific made an elaboration of cost factors and subdivisions as between freight and passenger business. It was pointed out that the method of subdivision followed was in substantial accordance with the method sanctioned by the United States Postal Department in regard to an adjudication upon the rates of railway mail pay which was then pending before the Interstate Commerce Commission, and in which application the Postal Department was itself a party. This allocation of costs for a six-months' period in the Canadian Pacific gave 32 per cent (32.173) of the total costs of the business as being allocated to passenger traffic.

As a working measure, however, it will serve if the 28 per cent above referred to is applied in the present instance. On other facts concerned with an attempt to measure costs so as to apportion these as bearing on the underlying factors in a general scheme of freight and passenger rates, it might be that a more refined measure involving different factors would be necessary. In the present instance, what is involved is a test of the justifiability, if allowed, of the specific rate increase asked for.

The railway earned from passenger business in the period January to July, 1919, \$91,763. Twenty-eight per cent of the operating expenses of \$477,272, for the period in question, would give a total of \$133,636 as the proportion of operating expenses allocatable to passenger business as compared with \$91,763 earned in the same time.

Assuming that the percentage increase to 4 cents, as asked for, over 3.45 cents as at present in force would measure the increase in revenue obtainable therefrom and applying this to the passenger revenues of the seven-month-period under review, the result would be approximately \$14,000. This is to be compared with the figures given in the preceding paragraph.

For the year ending June 30, 1918, the average receipts per passenger per mile on this railway were 2.669 cents. Reducing the increase asked for on the standard fare to a percentage and applying this to the average receipts per passenger per mile, the result would be 3.096 cents per passenger per mile.

As bearing on the situation and earnings of the road in respect of passenger traffic, details may be given from the returns to the Dominion Government. The passenger density is relatively low and the average journey short. Comparative details as to the averages for the railways of Canada in general are also added.

Passengers Carried.	1918.	1917.	1916.	1915	1914.	1913.
Number of passengers carried earning revenue.. . . .	243,371	273,127	244,659	245,315	249,423	268,142

DENSITY, AVERAGE JOURNEY AND AVERAGE FARE.

The above items are of value as indicating the general nature of the business. The comparisons given with general averages for Canada are simply illustrative—not conclusive.

Number of passengers carried one mile per mile of line (passenger density).

	1918.	1917.	1916.	1915	1914.	1913.
(a) Q. M. & S. Ry.	29,237	33,759	27,890	27,469	28,395	31,255
(b) All Canadian railways..	82,090	79,829	72,611	69,802	100,309	111,353

Average passenger journey (miles).

	1918.	1917.	1916.	1915	1914.	1913.
(a) Q. M. & S. Ry.	23.04	23.75	21.91	21.52	21.97	22.62
(b) All Canadian railways.	63	59	55	54	66	71

Total amount received from each passenger.

	1918.	1917.	1916.	1915	1914.	1913.
(a) Q. M. & S. Ry.	\$0 61	\$0 58	\$0 56	\$0 56	\$0 58	\$0 55
(b) All Canadian railways..	1 32	1 14	1 31	1 22	1 32	1 39

It is abundantly evident that there have been large increases in cost.

The grounds of objection to the proposed increases as summarized in the answers filed prior to the hearing by the municipalities fall under five headings:—

- (1) The railway does not supply sufficient freight cars.
- (2) It does not issue second-class tickets.
- (3) Objection is made to the increase on the ground that it would give higher rates than are charged on other railways.
- (4) The passenger service should be improved without an increase in passenger rates.
- (5) There was a poor passenger service.

The objections raised to the inadequacy of the freight service are entirely distinct from, and should not be considered with, the question of adequacy of passenger rates.

As to the issuance of second-class tickets, there was nothing developed at the hearing to show under what section, if any, of the Railway Act or of the Special Act, there was a statutory obligation on the part of the railway to issue such tickets.

As to the objections raised in reference to the proposed increase giving higher rates than are charged on other railways, this is a matter which must be looked at entirely from the standpoint of particular facts, and general comparisons for or against do not advance the matter.

At the hearing, the figures of earnings and operating expenses were criticized by the representatives of the municipalities. At the same time, it was pointed out that their criticisms were general, as they had not the specific information necessary to pass finally upon the matter. The figures have been checked.

Criticism was made on the ground that a considerable part of the deficit to which the railway was subjected might be eliminated by cutting down the item of free transportation. The Board asked for a return of the number of annual passes issued by the railway in 1918. The total as returned for 1918 is 901. Under the Railway Act, the railway is permitted to issue free transportation to its employees and employees of other railways. It is also permitted to issue free transportation to governmental bodies and their agencies, and there are also certain statutory requirements as to obligatory issuance of free transportation.

An analysis on a percentage basis shows the following distribution:—

	Per cent.
Railways and railway organizations.	57.04
Regulative bodies.	4.8
Governmental officers.	21.1
Members of parliament.	11.9
	<hr/>
	94.84
	<hr/>

Thus accounting for 94.84 per cent of the total. It is stated that only fifteen to twenty of these passes are used frequently; the balance are rarely, if ever, used. As to the item of transportation exchanged between this railway and other railways, which represents the bulk of free transportation given, it would seem to be a fair conclusion that not much traffic of this kind would pass over the short mileage of this railway. On what is before the Board, a conclusion is not justified that any considerable addition to the revenues of the company is available from this source.

Another factor to which attention was directed was the expense of management. It was alleged that the general expenses were unnecessarily large.

There are only two general officers whose salaries are in any way a charge against the railway. The Board has had before it the exact figures and is satisfied that the portion of the salary charged in each case against this railway is not exorbitant. The balance of the salary in each case is charged against other railways under the same general management.

The following information is from a communication on file with the Board in reply to a specific query:—

“A request was made for some specific authority or order necessitating the increase in the charge to the Quebec, Montreal and Southern Railway on account of the taking over of the railways in the United States by the United States Railroad Administration which led to a complete accounting separation of the properties. A statement was filed with the Board under date of January 29, 1919, giving the charges to general expenses for the three years ended December 31, 1918, and under the column of remarks on this statement the following information was given: ‘Much of the accounting of the Quebec, Montreal and Southern Railway is handled in the general offices at Albany, N.Y. The taking over of the railways in the United States by the United States Government led to a complete accounting separation of the properties and brought about an increase in these charges to Q.M. and S. Ry. This with the great increases in wages granted to clerical organizations explains the increase in general expenses 1918, compared with previous years;’ and this inquiry apparently relates to this information.

“The Quebec, Montreal and Southern Railway was not taken over by the United States Railroad administration. This made it necessary to establish a complete accounting organization, and to keep down the cost this organiza-

tion was created in Albany, N.Y., where the employees could also do the work of one or two other small companies, each company being charged a portion of the expense, thus reducing the cost. It also made it necessary to create a car service department with a car accountant, and this organization was created in Montreal. Naturally, the separate organizations were more expensive than were the charges of the Delaware and Hudson Company for doing the work in previous years where it was only a trivial part of the total.

"It should also be remembered that the average wage of the railway clerical organizations were enormously increased under the McAdoo wage schedule, the minimum wage under Supplement 7 to General Order No. 27 (McAdoo award) was made \$87.50, while this minimum had previously been \$35 or \$40."

Comparison may be made of the percentage section of general expenses to total operating expenses in the case of the railway with the relationship for the same items in the case of the railways of Canada in general.

General expenses (per cent of

expense)	1918.	1917.	1916.	1915.	1914.	1913.
(a) Q. M. & S. Ry	3.44	2.99	3.75	3.56	3.45	5.3
(b) Railways of Canada ..	2.77	3.4	3.74	4.72	3.74	3.39

The average percentage for the railways of Canada in this period was 3.62 per cent as against 3.74 per cent for the railway. If the figures of 1917 and 1918 are taken as more characteristic, the averages are 3.1 per cent in the case of the Quebec, Montreal and Southern Railway and 3.19 in the case of Canadian railways in general.

The difference by which the Quebec, Montreal and Southern Railway Company's percentage for 1917 is lower than that for 1918, viz., 0.45 per cent of 1 per cent, if applied to the operating expense of 1918 would have meant a reduction of approximately \$3,000. As against this, it may be noted that the salaries of clerks and attendants were approximately the same amount greater in 1918 than in 1917.

As has been explained, the subdivisions necessitated by the United States Railroad administration between the railway in Canada and the controlling railway in the United States has necessitated as a matter of strict accounting a larger charge against the Quebec, Montreal and Southern Railway. This is a matter over which the railway has no control. Details are available for the calendar year 1916, in which this subdivision was not in force in the same manner, and 1918 when it was fully in force. For the calendar year 1916, the general expenses were 3.63 per cent of the total operating expense. In 1918, the figure was 4.60 per cent. If the 1916 percentage had applied in 1918, it would have meant a reduction of approximately \$7,700.

In the computations above regarding the relation of passenger earnings and their relation to general expenses, the figure of \$447,272, as given, was taken as the deficit for the seven months ending July, 1919, and a computation based thereon. If it is assumed that the general expense item for 1918 is excessive to the extent that it exceeds the 1916 ratio, then applying a similar reduction the figures current for 1919 would be similarly reduced, giving an approximate reduction of \$2,700. Making this deduction, there would be for the period in question a computed passenger cost of \$130,916 as against earnings of \$91,763.

The figures for the eight-months' period, January to August, 1919, have just been received. These show a total railway operating revenue for the period in question of \$378,771.39, with a total railway operating expense of \$550,100.90, or a deficit of \$171,329.51. The operating ratio for the month of August was 135 per cent; for the eight-months' period it was 145 per cent. The passenger-train earnings for the period in question amounted to \$105,713.68. A computation allocating to the passenger business such proportion of cost as passenger-train earnings bear to total railway

operating revenue (the same method as already used above), would show approximately \$154,000 of costs to be checked against the passenger receipts.

The total pay-rolls for the period in question took up 84 cents out of every \$1 of railway operating revenue.

It will be noted that in general the conditions shown in the analysis for the seven-months' period ending July have continued during August. The figures thus available for two-thirds of the year may be taken as giving a characteristic condition as to cost, at a time when diverted traffic due to war conditions has fallen off.

On due consideration of the various factors concerned, the conclusion is unavoidable that the burden of proving that the increase in rate as requested is justifiable has been successfully borne by the railway; and order should, therefore, go authorizing, subject to compliance with the terms of the Railway Act, the increase in the standard rate.

September 17, 1919.

The Deputy Chief Commissioner concurred.

ORDER No. 28837.

In the matter of the application of the Quebec, Montreal and Southern Railway Company, hereinafter called the "applicant company," for permission to increase, from 3.45 cents to 4 cents per mile, the rate shown in its tariff G.R.C. No. 262 as its standard passenger fare between all stations on the said railway in Canada.

Case No. 2824.

FRIDAY, the 3rd day of October, A.D. 1919.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

HON. W. B. NANTEL, *Deputy Chief Commissioner.*

A. S. GOÛDEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Montreal, January 16, 1919, the city of Sorel, the applicant company, and certain parishes along the railway of the applicant company, being represented at the hearing, and what was alleged,—

It is ordered: That the applicant company be, and it is hereby, authorized to increase its standard maximum passenger fare from 3.45 cents, as shown in its Standard Passenger Tariff, C.R.C. No. 262, effective March 15, 1918, to 4 cents a mile; the increased fare herein authorized not to become effective until the applicant company has complied with the requirements of section 334 of the Railway Act, 1919.

F. B. CARVELL,
Chief Commissioner.

Re Express Rates—deduction for non-cartage in connection with second-class rates.

File No. 29040.24.

RULING.

In response to the following statement contained in a letter, dated September 3, 1919, received by the Board from Mr. Percy G. Denison, manager, the Winnipeg Board of Trade—

“In regard to allowance for unperformed cartage, I am attaching a statement showing the rates applicable from Winnipeg to points in the province of Manitoba, prepared to show the first- and second-class rates from cartage point to cartage point; from cartage point to non-cartage point; and from non-cartage point to non-cartage point, as taken from the express tables. It will be noted that while the full allowance is made for unperformed cartage on the first-class goods, the full allowance has not been made on second-class shipments except in isolated cases. It is our understanding here that the cartage in full where not performed would be allowed on both first- and second-class goods”—

the Board ruled as follows:—

The situation is that the 15-cent deduction per 100 pounds where there is only one cartage and the 30-cent deduction per 100 pounds where there is no cartage at originating or destination point is related to the first-class rate. The second-class rate being 75 per cent of the first-class rate, the appropriate deduction for the second-class rate is 25 per cent off the 15-cent and 30-cent rate in each case.

OTTAWA, September 25, 1919.

Complaint of Mr. George Boyce, M.P., for Carleton, Ontario, against the Canadian National Railways, charging the railway company with attempting to close up a cattle pass which he alleges they agreed to maintain for him at the time the right of way was purchased.

JUDGMENT.

File No. 3878.502.

The CHIEF COMMISSIONER:

This case was heard at the sittings of this Board held at Ottawa on the 16th day of September, instant, and it appeared from the arguments that Mr. Boyce was promised a cattle pass on the eastern side of a small stream passing through his land by some person connected with the railway, although there is no evidence that this person had power to bind the railway company as to a cattle pass. The railway crosses the land of the applicant at this point over a fill about 10 feet high, and, up to the present summer, part of the track has been upon a trestle. Quite recently the railway company commenced operations for the construction of a steel girder bridge over the stream, according to the plans approved by this Board, and, in doing so, attempted to erect a pier on that portion of the land which Mr. Boyce had been using as a cattle pass. As the parties have agreed since the argument to give Mr. Boyce a cattle pass on the western side of the eastern pier, it would be unnecessary to go further at the present time than to state that an order will issue giving to the applicant a roadway on the western side of the eastern pier, to be 12 feet wide with 6 feet clearance below low steel or girder; the roadway to be made of field or flat stone whichever is available, to the satisfaction of the Engineer of this Board, and to be continuously

so maintained by the railway company. The question of putting a railing on the outside of the roadway next the stream is left to the judgment of the Chief Engineer of the Board.

September 26, 1919.

The Assistant Chief Commissioner, the Deputy Chief Commissioner, and Commissioners Goodeve, Boyce, and Rutherford concurred.

Complaint of the Henderson Farmers' Lime and Phosphate Company, of Woodstock, Ont., against the proposed increase in rates on agricultural limestone.

JUDGMENT.

File 26786.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Under date of January 20, 1919, the following letter was received from the Henderson Farmers' Lime and Phosphate Company, of Woodstock, Ont.:—

"The Dominion Railway Board,
"Ottawa, Ont.

"GENTLEMEN,—We wish to call your attention to the fact that the railway companies have notified us that they propose to place our product "Agril Lime" upon a mileage basis, and at the same time materially raising the rates.

"We wish to enter our most emphatic protest against this increase by the railway companies, and request your Board to withhold your consent to such action on their part until the matter is brought before your Board for consideration at the earliest possible date in Toronto.

"Our grounds for this protest are based upon the following facts:—

"1st. The railway companies have been granted four increases in the past two years, amounting in all to 60 per cent.

"2nd. Such increases have militated against our business to an alarming extent and a further increase will simply close our plant altogether.

"3rd. The rates at present in force are out of all proportion to the value of the goods.

"Trusting this protest will cause you to withhold your consent to the proposed rates going into effect on February 7, 1919.

"Yours very truly,

"(Sgd.) HENDERSON FARMERS' LIME, LIMITED
"Per J. T. Henderson."

By Order No. 28073, dated February 5, 1919, and upon it appearing that a similar advance in rates to that involved in the application was proposed from Beachville, Ont., provision was made for the suspension of Grand Trunk Railway Company's Supplement No. 16 to Tariff C.R.C. No. E-4024, and the Cancellation of Item 195 in the Canadian Pacific Railway Company's Supplement No. 14 to Tariff C.R.C. No. E-3551.

The matter was subsequently set down for hearing in Toronto and was also heard at a later date in Ottawa to consider, *inter alia*, additional evidence put in by Mr. Walsh on behalf of the Canadian Manufacturers' Association. Evidence was also given by Mr. Essery for the Crushed Stone, Limited, of Kirkfield, Ont.

Since the final hearing, additional communications have been submitted both by the Crushed Stone, Limited, and by the Henderson Farmers' Lime and Phosphate Company. Communications have also been received from the railways. The matter is now ripe for judgment.

On February 15, 1918, there was a hearing in Toronto on the application of the Henderson Farmers' Lime and Phosphate Company of Woodstock, Ont., for lower rates on agricultural stone dust, in carloads, from Beachville, Ont., to various points, than the commodity rates then in force.

Judgment in this matter issued holding that the existing rate basis was found not to be unreasonable, and Order No. 27378 issued in due course. Detail as to the nature and use of agricultural limestone is set out in the judgment in question and does not need to be repeated here. In the judgment, the complaint is referred to as being directed against the action of the Grand Trunk Railway Company in increasing its rates on agricultural limestone from Kirkfield, Ont. The following excerpts from the judgment indicate the nature of the rate basis:—

"The rate which was put in force from Kirkfield by supplement 45 to tariff C.R.C. E-3422 covered advanced rates on stone dust in packages, C.L., from Kirkfield, Ont., to various points. These rates were increased from one-half cent to one cent per 100 pounds. The rate to Toronto, which, as will be seen below, may be taken as typical, was advanced by one-half cent per 100 pounds.

"The rates as put in from Kirkfield in the tariff in question were on the same mileage basis as the existing rates from Beachville, the basis from the latter point being 80 per cent of the crushed stone mileage scale rates, plus the 5 cents per ton granted in the Eastern Rates Case.

"While the agricultural lime rate when the application was launched was on the basis of 80 per cent of the crushed stone mileage scale, plus 5 cents per ton, this proportionate adjustment has been subject to revision as a result of the judgment in *The Fifteen Per Cent Case*. The result is that while there is a commodity rate basis, which is lower than the revised crushed stone mileage scale, the addition of 15 per cent to the commodity basis hitherto existing leaves the rate at, in the case of Toronto mileage, approximately 95 per cent of the crushed stone mileage scale."

At the hearing in 1918 it was stated that the principal shipments from Kirkfield, Ont., were to Toronto. Taking this movement, the effect of the rate increases involved in the present application may be gathered from the following summary: On January 15, 1915, the G.T.R. published in their tariff C.R.C. No. 3036 a rate of 4½ cents per 100 pounds or 90 cents per ton on stone dust from Kirkfield to Toronto. Effective October 23, 1916, this rate was increased to 95 cents per ton. On January 15, 1918, to \$1.05 per ton; on March 15, 1918, to \$1.20 per ton; on August 12 to \$1.40 per ton, and it is proposed by Supplement No. 16 to Tariff C.R.C. No. E-2424 to put this commodity under the mileage scale which will make the rate \$1.45 per ton.

Taking the rates as rates, without any reference to the volume moving, rates from Beachville to some 42 points, varying from the short haul of 14 miles to the long haul of 124, give an average present rate on agricultural limestone of 5.9. On the stone mileage scale as proposed, the average rate for the same points is 6.27, which would mean an average increase of 7.4 cents per ton.

From the evidence in the former hearing, about 60 per cent of the Kirkfield product was shipped to Toronto. The increased rate to Toronto has already been indicated. Taking some eighteen other points with mileages varying from 27 to 247 miles, the average rate at present is 8.63. The average rate on the stone mileage scale is 9.19, which would figure out an average increase of 11.2 cents per ton.

From the evidence submitted, the commodity is one which is of value in production. This statement, however, cannot be taken as obviating the necessity of the commodity having its due participation in the increasing costs of railway operation.

Considering other factors bearing on the matter, it may be pointed out that in the past rates on agricultural limestone have been lower than the stone mileage scale. In addition, it should be noted that where agricultural limestone goes to a fertilizer plant, e.g., at Toronto, there is a second haul on the manufactured product.

Giving due consideration to the nature of the movement, the value of the product, and the rate increases which it has already had placed upon it, I am of the opinion that the further increase proposed has not been justified.

October 1, 1919.

The Deputy Chief Commissioner and Commissioners Goodeve and Rutherford concurred.

Application of the New Brunswick Railway Company (C.P.R. Co.) under sections 222, 227, and 237 for authority to construct two industrial sidings at mileage 56.8 Edmundston subdivision, in lot 19, town of Edmundston, N.B., and connection therefrom to the tracks serving the property of the Fraser Companies, Ltd., which connection will cross at grade the public highway and the Temiscouata Railway and will replace the siding originally serving said premises.

File No. 29473.

JUDGMENT.

The CHIEF COMMISSIONER:

This is an application of the New Brunswick Railway Company, operated by the Canadian Pacific Railway Company, under sections 222, 227, and 237 of the Railway Act, to construct two industrial sidings at mileage 56.8, Edmundston subdivision, in the town of Edmundston, N.B., and in doing so, it will be necessary to cross the main line of the Temiscouata railway at that point, to reach the pulp mill of the Fraser Companies, Ltd., situate about half a mile west of the proposed crossing.

The facts are that, before the Temiscouata railway was constructed, a siding extended from the Canadian Pacific Railway yard at Edmundston across Victoria street and across what is now the right of way of the Temiscouata extending into a saw-mill on the bank of the Madawaska river then known as the Murchie mill. When the Temiscouata railway was constructed, a diamond was placed in this siding, evidently by agreement, as there seems to be no record of authority having been granted by the Railway Committee of the Privy Council and no action has been taken by this Board since its creation. When the Fraser company were negotiating for the construction of their pulp mill, an agreement was drawn up between them and the Temiscouata Railway providing that the tracks of the Temiscouata should be raised about 8 feet and moved about 10 feet to the east, Frasers agreeing to convey to the Temiscouata a small portion of land for the change in the location of the Temiscouata tracks and the Temiscouata conveying to the Frasers about the same amount for the purpose of a siding; but the agreement was silent as to the insertion of a diamond in order to effect a crossing.

The Frasers contend that the proposed crossing is simply a continuation of the old siding leading to the Murchie mills, of which they are now the owners, although it is their intention to place a diamond about 20 feet to the north of the old location. The Temiscouata contends that it is an entirely new crossing, and should be treated accordingly. I am unable to agree with this contention, not only from the evidence adduced but also from a personal knowledge of the transaction and location of the tracks, extending back over a period of ten or more years. I find that the proposed crossing is practically a replacing of the old siding, and, therefore, the Frasers would have the right independently of all other powers vested in this Board to cross the tracks of the Temiscouata; and, even were such not the case, I would then have no hesitation in ordering the crossing to be placed as proposed.

The proposed crossing is within 600 feet of the Temiscouata station and about the same distance from the C.P.R. station, and any movements over the Temiscouata would have to cross Victoria street, which is one of the main streets of the town. No train could possibly be moving at any great speed at that particular point, and, there-

fore, I do not think an interlocking plant necessary, or even a bell signal under present conditions. The order will, therefore, be that the applicants have the right to cross the tracks of the Temiscouata under the directions and to the satisfaction of the Chief Engineer of this Board, reserving to the Board the right, at any future time, to make any additional order for the protection of trains or the public at this particular point, and both parties to carry out any directions given by the Chief Engineer as to operation thereupon until such further order, if any, is made by the Board. The cost of placing the diamond to be borne by the applicant company.

October 3, 1919.

The Assistant Chief Commissioner, the Deputy Chief Commissioner, and Commissioner Rutherford agree in the disposition recommended.

Re protection at Renfrew Street crossing, Renfrew, Ontario, on the line of the Canadian Pacific Railway Company.

File No. 26727.34.

JUDGMENT.

CHIEF COMMISSIONER:

This question was argued before the Board in March last, but no decision given, as the Chief Operating Officer was ordered to visit the locus and make a report. He did so, and recommended as follows:—

“The company should undertake in instructions, filing a copy with the Board, prohibiting their men from leaving cars standing on the north siding between the clearance point of the cattle pen siding, on the west side of the street, and the clearance point of the passing track switch, on the east side of the street; and when freight trains or switching operations require the use of the south siding and it is necessary to uncouple cars to clear Renfrew street, that the cars on both sides be left clear of the street line, and that this siding be not used for the storage of cars at any time.”

Mr. Flintoft appeared for the Canadian Pacific Railway Company and objected to the making of an order providing that no cars should be left standing on the north siding nearer than 100 feet on either side of the street on the ground that it created a precedent, which, if generally applied throughout Canada, would deprive the railway companies of a great amount of siding trackage, excepting for the passage of trains over the same.

While no doubt that might be the case, yet the rights of the public must be protected as far as possible with no unnecessary damage to the railways, and, in my judgment, 100 feet on either side of a street is not too much clearance for such protection, because it gives the ordinary public that much vision when crossing the track which otherwise would be precluded were cars allowed to stand on the siding close up to the street. I, therefore, think an order should issue prohibiting cars from standing on either side of Renfrew street on the north siding at Renfrew, Ont., nearer than 100 feet from the street line.

October 3, 1919.

The Assistant Chief Commissioner, the Deputy Chief Commissioner and Commissioner Rutherford concurred.

Complaint of the Canadian Manufacturers' Association, per J. E. Walsh, Toronto, Ont., against General Order of the Board, No. 162, and the matter of relieving telegraph companies from responsibility for failure to transmit messages.

File 13622.4.

JUDGMENT.

Mr. COMMISSIONER BOYCE:

Complaint is made by the Canadian Manufacturers Association that the conditions of the contract with telegraph companies impose no obligations or penalties for failure to transmit messages received by the company for transmission, and provision is sought (by amendment to the conditions of traffic sanctioned by Board's Order, No. 162, of March 30, 1916) for the imposition of penalties for non-delivery, in such cases as are due to gross negligence of the telegraph company, even though the message is not repeated.

The whole wide question of the liabilities attaching to telegraph companies, involving the point complained of, was fully considered by the Board upon the application which resulted in the order above referred to (No. 162). The question was further, incidentally, considered by the Board on the application of the Great North Western Telegraph Company, the Canadian Pacific Railway Company's Telegraph, and the Grand Trunk Pacific Telegraph Company, for an order approving conditions varying those approved by the Board by Order No. 162, the object of such application being to vary the conditions so sanctioned in a manner which would more fully relieve the telegraph companies from liability, to sender or addressee, whether from negligence or otherwise, in respect of receipt, transmission, and delivery of messages.

The application last referred to, was heard at Ottawa on April 17, 1917, and, following a considered judgment of the then Chief Commissioner, dated July 14, 1917, Order No. 26378 was made, dated July 26, 1917, dismissing the application, but reserving to the applicants leave to apply for a stated case, in writing, for the opinion of the Supreme Court of Canada, upon the questions of law involved in the application.

A stated case has never been presented to the Supreme Court—has not been settled by the Board—but a draft case has been submitted to the applicants who have not yet concurred in it, although by written memorandum they, the applicants, have suggested that the case to be submitted for the opinion of the Supreme Court of Canada, should contain the following questions, namely:—

- (1) Was the Board right in holding that a condition in the contract purporting to limit the company's liability to the addressee of a telegram is, under the law of the province of Quebec, ineffectual for that purpose?
- (2) Has the Board power by regulation—independently of the contract—to limit the liability of the company to the addressee of a telegram?
- (3) Would such a regulation be effectual for such purpose under the law of the province of Quebec?

In the judgment of the late Chief Commissioner, upon the application above referred to, the law is fully discussed with regard to the applicability of the Civil Code of the province of Quebec, article 1053, as distinguishing liability affecting the transmission and delivery of telegraph messages from that settled by legal decisions of our courts, and of the English courts, referred to in the judgment of the late Chief Commissioner. It is open to some doubt, as the late Chief Commissioner concludes, as to whether (at any rate with regard to the conditions discussed in the previous application) the Civil Code of the province of Quebec referred to may not operate, or intervene, in a special manner to regulate and define liability upon these telegraph messages as between the company and the sender (possibly the addressee) in a manner different from that laid down by the courts, and, for the purpose of settling this

important question and looking towards obtaining a decision which will secure uniformity, leave was reserved to state the case referred to for the opinion of the Supreme Court. Pending the submission of such a case and the answers of their Lordships of the Supreme Court of Canada thereupon, there must still remain the doubts expressed by the late Chief Commissioner with regard to the law, especially as regards the province of Quebec.

In his written judgment, above referred to (page 4), the late Chief Commissioner says:—

“In so far as the contracts under which telegrams are despatched are concerned, it was admitted at the hearing that the contract settled by Mr. Scott throws a greater liability on the telegraph company, and of course increased the liability over that which previously existed in Canada.”

My view is that, the Board having settled conditions of transmission which contain, I think, reasonable and adequate provision to guard against errors and to insure correctness in the transmission and delivery of messages, and in view of the questions of law which are raised and which are standing for the opinion of the Supreme Court of Canada, and which, inferentially at least, affect the questions which we are now asked to decide, I think it would be extremely inadvisable for the Board to go any further in the sanctioning of additional conditions.

I would dismiss the complaint.

OTTAWA, October 7, 1919.

The Chief Commissioner, the Assistant Chief Commissioner and the Deputy Chief Commissioner concurred.

Richmond and Coaticook Train Service.

File No. 27563.9.

JUDGMENT.

THE CHIEF COMMISSIONER:—

This is an application on the part of the Board of Trade of the city of Sherbrooke on behalf of the public from Richmond to Coaticook; both inclusive, for the restoration of trains Nos. 9 and 10, which were discontinued on the 28th ultimo.

According to the evidence adduced, the revenue from passenger traffic alone amounts to about \$100 per day and the out of pocket expenses amount to about \$90 per day, this leaving \$10 for this particular train's contribution towards general overhead expenses of the railway. While the margin of profit is small, yet considering the advantage which these particular trains are to the parties interested, I consider the train service should be restored, but, in doing so, I would not like to lay down the general principle that every local train between main line points which breaks even between receipts and expenditures should become a permanent institution, but the decision should be governed to some extent by the necessity of the service to the travelling public.

In this particular case, the traffic from Coaticook to Sherbrooke would seem pretty well taken care of by the existing train service, but the traffic from Richmond to Sherbrooke, under existing conditions, would be very limited and quite unsuited to the necessities of the number of people living in that portion of Quebec, when we consider that Sherbrooke is the centre of the business activities of several counties in the Eastern Townships.

I would, therefore, recommend that the order issue, subject to the condition that the train be restored beginning on Monday, the 20th day of October, instant, to continue until the 1st day of May next; the company to make monthly reports to the

Board of the actual receipts and expenditures from all sources, with leave to the company to apply for a discontinuance of the service before the expiration of the date herein provided for.

October 8, 1919.

The Assistant Chief Commissioner and the Deputy Chief Commissioner concurred.

Complaint of L. H. Scandrett & Son, London, Ont., re increase in freight rate on desiccated cocoanut, Vancouver to London, Ont., C.P.R.

File 29036.

RULING.

Referring to the above complaint, I am directed to state that the matter of dealing therewith has been delayed on account of the necessity of looking carefully into the rate arrangements made on the American side of the line. The matter has now been fully considered, and I am directed to write you as follows:—

In the matter of westbound transcontinental freight rates, General Order No. 241 recognized that these commodity rates were definitely related to the westbound commodity rates from eastern United States points, and that because of the competitive nature of the traffic it was expedient to maintain the equilibrium, and so rates were permitted to be increased on five days' notice "so as to place them on at least an equality with the rates now in effect from the neighbouring States of the Union." This sanction related to the short notice, not to the amount of increase, this latter matter being governed by the maintenance of the equilibrium.

General Order No. 246, of August 12, 1918, dealt with the matter of eastbound transcontinental commodity rates, and recognizing the competitive nature of the commodity rate situation permitted rates to go in on short notice.

The authorization was related to the short notice alone and did not deal with authorization of a specific increase. The order recites that ".....eastbound transcontinental freight rates on specific commodities from points in British Columbiato destinations in Eastern Canada.....are related to the rates on like commodities.....shipped from the contiguous State of Washington....."; and it also recognized that "because of the competitive nature of the traffic it is expedient to continue at least the said relationship....." The order provides no specific increase but simply deals with continuation of the relationship, with the proviso that the lowest rates in effect from corresponding Washington terminals should operate as a maximum on the movement from British Columbia terminals.

The order set out that the United States Railroad Administration had authorized an increase in the United States of 25 per cent "subject to certain modifications with respect to certain commodities." The governing factor was what happened in adjacent United States territory.

The general order providing for rate increases in the United States (Order No. 28) took out, effective June 25, 1918, all "import" and "export" rates. While this was afterward modified, it was not modified to the extent of including desiccated cocoanut. The result was that from June 25, 1918, to May 28, 1919, desiccated cocoanut moved from Washington terminals on the class rate of \$2.75. The Canadian commodity rate having been put in to meet a competitive condition, it was open to the Canadian railway, in the absence of such a competitive condition, to carry on the class rate. While the increase to the class rate basis went in in the United States on June 25, 1918, the commodity basis of \$1 was continued from British Columbia Coast terminals until July 24, 1918. On July 25 the class rate of \$2.39½ as against the class rate of \$2.75 from contiguous Washington terminals went in. This lower basis on the

movement from British Columbia terminals continued until May 29, 1918, when both were put on a commodity basis of \$1.25.

On consideration of the facts, the railway has not violated General Order No. 246, and the Board is, therefore, not in a position to make a finding that the \$2.39½ rate was illegal, such finding bearing on the question of refund.

Yours truly,

A. D. CARTWRIGHT,
Secretary.

OTTAWA, October 9, 1919.

ORDER No. 28804.

In the matter of the application of the Brockville Moulding Sand Company, Limited, of Montreal, hereinafter called the "applicant company," under section 185 of the Railway Act, 1919, for an order directing the Grand Trunk Railway Company of Canada to construct a siding at a point two miles west of Brockville, Ont., into Mrs. Bressee's farm, as shown on the plan and profile, dated August 24, 1918, on file with the Board under file No. 26691.18.

FRIDAY, the 12th day of September, A.D. 1919.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. W. B. NANTTEL, *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, June 10, 1919, in the presence of counsel for the applicant company and the railway company, and what was alleged; and upon reading the further submissions filed,—

It is ordered: That the Grand Trunk Railway Company be, and it is hereby, directed to construct, maintain, and operate a branch line of railway, or siding, from a point on its railway two miles west of Brockville, in the province of Ontario, into Mrs. Bressee's farm, on lot 22, in the first concession of the township of Elizabethtown, as shown on the said plan on file with the Board under file No. 26691.18; the proposed siding to cross the Lyn road, as diverted; and the crossing to be constructed in accordance with "The Standard Regulations of the Board Affecting Highway Crossings, as amended May 4, 1910."

2. That the point of connection be protected by semaphores placed 1,000 feet on each side of where the main line is cut, and connected up with the switch and derail on the siding; and when the switch is open the signals to be at "danger." The cost of the said protection to be borne and paid by the applicant company.

3. That the applicant company deposit, to the credit of the Board of Railway Commissioners for Canada, in some chartered bank in Brockville, the sum of \$9,100, to await further order, being the sum estimated as necessary to defray all expenses of constructing and completing the said spur, as provided by section 185 of the Railway Act, 1919.

4. That if any dispute arise as to the construction or operation of the said spur, or as to the expense thereof, the same be referred to the Board.

5. That in the event of the said work costing more or less than the above sum, such difference be adjusted by the Board.

6. That the railway company repay or refund to the applicant company, its successors or assigns, by way of rebate, \$1 per car from the tolls charged by the railway company in respect of the carriage of traffic for the applicant company over the said spur, until the said sum of \$9,100, or such other sum as may be expended upon the said work, has been repaid by the railway company to the applicant company, its successors or assigns.

7. That the protection (if any) which may at any time in the future be found necessary by the Board to be provided be installed and maintained at the expense of the applicant company, its successors or assigns.

8. That the provisions of this order be without prejudice to any application which may be made at any time by the municipality in regard to the operation or location of the spur.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 28803.

In the matter of the application of the Grand Trunk Railway Company of Canada, hereinafter called the "applicant company," under Sections 256 and 252 of the Railway Act, 1919, for authority to carry a railway truck along that part of Common street, in the city of Montreal, beginning at a point marked "A," and continuing to a point marked "B," and from a point marked "C," and continuing to a point marked "D;" and to connect its tracks with the tracks of the Harbour Commissioners of Montreal in the said city, at a point on Common street, marked "E,"—all as shown on the plan and profile dated July 21, 1919, on file with the board under file No. 29568.

WEDNESDAY, the 17th day of September, A.D. 1919.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

HON. W. B. NANTEL, *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, September 16, 1919, in the presence of counsel for the applicant company, the Harbour Commissioners of Montreal, and the city of Montreal, and what was alleged; counsel for the Harbour Commissioners of Montreal and the city of Montreal consenting,—

It is ordered: That the applicant company be, and it is hereby, authorized to carry a railway track along that part of Common street, in the city of Montreal in the province of Quebec, beginning at a point marked "A," and continuing to a point marked "B," and from a point marked "C," and continuing to a point marked "D;" and to connect its tracks with the tracks of the Harbour Commissioners of Montreal, in the said city, at a point on Common street marked "E,"—all as shown on the said plan and profile on file with the Board under file No. 29568, upon and subject to the following conditions, namely:—

1. That the Harbour Commissioners of Montreal, their successors or assigns, maintain the top of the rails of their track at the same level as that at which they are at present laid, and as shown on the said plan filed.

2. That the Harbour Commissioners of Montreal, their successors or assigns, indemnify and save harmless the city of Montreal against all loss, cost, damage, or expense that the city may be put to or suffer in any way by reason of the construction, maintenance, operation, existence, or removal of the said track.

3. That the Harbour Commissioners of Montreal, their successors or assigns, unless otherwise ordered by the Board, upon receiving thirty days' notice in writing from the said city, under its corporate seal, to that effect, remove the said track and the materials and appliances pertaining thereto from the said Common street, and restore the said street to the same plight and condition as it was in at the time the said track was constructed, unless the said Harbour Commissioners, their successors or assigns, file with the Board, within ten days after the receipt of the said notice, an application for an Order authorizing the continuance of the said track and the operation thereof.

4. That the Harbour Commissioners of Montreal, their successors and assigns, pave the space upon Common street that is owned by the city, and occupied by the said track, and for a width of eighteen inches outside of each rail, whenever the city paves the said street where it adjoins the said track.

5. That the Harbour Commissioners of Montreal, their successors or assigns, keep in good repair and condition the space upon the said street that is owned by the city and occupied by the said track and for a width of eighteen inches outside of each rail.

6. That no car or engine be allowed to stand on the said track on Common street that is owned by the city.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 28812.

In the matter of the application of the Imperial Oil Company, Limited, of Sarnia, Ont., for a ruling in the matter of claims against the Canadian Pacific Railway Company for a refund of demurrage charges which accrued during the epidemic of Spanish Influenza, on a shipment detained at Shawinigan Falls, Que.

File No. 1700.234.24.

WEDNESDAY, the 17th day of September, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, September 16, 1919, the Imperial Oil Company, Limited, the Canadian Car Demurrage Bureau, and the Canadian Pacific Railway Company being represented at the hearing, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 28782.

In the matter of the application of Andre Sagala, of Vaudreuil, in the province of Quebec, hereinafter called the "applicant," for an order directing the Canadian Pacific Railway Company (Ontario and Quebec Railway Company) to replace the existing crossing on his farm, No. 1891, in the parish of Vaudreuil, by an overhead crossing, at the expense of the railway company.

File No. 28776.

THURSDAY, the 18th day of September, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

Upon reading what is filed in support of the application and on behalf of the railway company; and upon the report and recommendation of an Engineer of the Board, concurred in by its Chief Engineer,—

It is ordered: That the application be, and it is hereby, refused.

W. B. NANTEL,
Deputy Chief Commissioner.

ORDER No. 28813.

In the matter of the complaint of the Dominion Millers' Association and the Canadian Manufacturers' Association against the new milling-in-transit rules filed by the railway companies operating in Canada east of lake Huron and the Detroit and St. Clair rivers, to become effective September 1, 1919.

File No. 8641.11.

THURSDAY, the 18th day of September, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Ottawa, September 16, 1919, the complainants, the Montreal Board of Trade, the Toronto Board of Trade, the Grand Trunk and Canadian Pacific Railway Companies, the Canadian National Railways, and the Canadian Freight Association being represented at the hearing, and what was alleged,—

It is ordered: That the complaint be, and it is hereby, dismissed.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 28807.

In the matter of the Order of the Board No. 27718, dated September 28, 1918, made after called the "applicant Company," for leave to terminate the siding agreement, made the 1st day of November, 1911, with the Vancouver Ice and Cold Storage Company, Limited, the siding in respect of which such application is made being situate in the city of Vancouver, in the province of British Columbia.

File No. 20130.

SATURDAY, the 20th day of September, A.D. 1919.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Vancouver, February 15, 1919, the applicant company and the Vancouver Ice and Cold Storage Company, Limited, being represented at the hearing, and what was alleged; and upon reading the further submissions filed by which the applicant company agrees, upon terms and receiving the necessary authority therefor, to construct a siding to serve the Vancouver Ice and Cold Storage Company, Limited, in lieu of the spur constructed and operated under the said agreement,—

It is ordered as follows:—

1. That the applicant company be, and it is hereby, authorized to construct, maintain, and operates a spur line of railway for the Vancouver Ice and Cold Storage Company, Limited, in the city of Vancouver, in the province of British Columbia, as shown on the plan dated Vancouver, February 21, 1919, on file with the Board under file No. 20130.

2. That the Vancouver Ice and Cold Storage Company, Limited, deposit to the credit of the Board of Railway Commissioners for Canada, in some chartered Bank in Vancouver, the sum of \$5,250 (being three-eighths of the estimated cost of the spur) to await further order.

3. That, in the event of the said work costing less than the estimated sum, namely, \$14,000, a refund of the proportionate difference be made to the Vancouver Ice and Cold Storage Company, Limited: and if the cost exceeds such estimate, the proportionate excess amount to be paid by the said company to the applicant company upon receipt of a properly certified account.

4. That the proposed spur be constructed and completed within three months from the date of this order.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 28809.

In the matter of the Order of the Board No. 27718, dated September 28, 1918, made upon the complaint of the Dominion Travellers' Association and the North-western Canada Travellers' Association of Montreal, and the Commercial Travellers, Association of Canada, Toronto, Ont., and suspending certain schedules of the Quebec, Montreal and Southern and the Napierville Junction Railway Companies, cancelling reduced fares and special baggage allowance for commercial travellers.

File No. 6679.2.

SATURDAY, the 20th day of September, A.D. 1919.

S. J. McLEAN, *Assistant Chief Commissioner.*Hon. W. B. NANTEL, *Deputy Chief Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, October 16, 1918, the complainants, the Ontario Commercial Travellers, and the railway companies being represented at the hearing, and what was alleged; and upon reading the further submissions filed,—

It is ordered: That the following schedules, cancelling reduced fares and special baggage allowance for commercial travellers, be, and they are hereby, disallowed, namely:—

Quebec, Montreal and Southern Railway Company—

Supplement 6 to C.R.C. No. 160.

Supplement 1 to C.R.C. No. 236.

Supplement 2 to C.R.C. No. 263.

Napierville Junction Railway Company—

Supplement 3 to C.R.C. No. 31.

Supplement 2 to C.R.C. No. 69.

Supplement 1 to C.R.C. No. 94.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 28810.

In the matter of the application of the Quebec Central Railway Company, hereinafter called the "applicant company," under section 330 of the Railway Act, 1919, for approval of its Standard Freight Mileage Tariff, C.R.C. No. 681, on file with the Board under

File No. 29641.

MONDAY, the 22nd day of September, A.D. 1919.

S. J. McLEAN, *Assistant Chief Commissioner.*A. S. GOODEVE, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the applicant company's standard freight mileage tariff, C.R.C. No. 681, on file with the Board under file No. 29641, be, and it is hereby, approved; the said tariff, with a copy of this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 28811.

In the matter of the application of the Quebec Central Railway Company, hereinafter called the "applicant company," under section 334 of the Railway Act, 1919, for approval of its standard passenger tariff, C.R.C. No. 174, on the basis of 3½ cents a mile.

File No. 29641.

MONDAY, the 22nd day of September, A.D. 1919.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the applicant company's standard passenger tariff, C.R.C. No. 174, on the basis of 3½ cents a mile, on file with the Board under file No. 29641, be, and it is hereby, approved; the said tariff, with a copy of this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 28818.

In the matter of the General Order of the Board No. 119, dated January 31, 1914, and the application of the Canadian Pacific Railway Company, hereinafter called the "applicant company," for authority to remove its station agent at Eholt station, in the province of British Columbia.

File No. 4205.229.

WEDNESDAY, the 24th day of September, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of an Inspector of the Board, concurred in by its Chief Operating Officer,—

It is ordered: That the applicant company be, and it is hereby, granted leave, pending further order, to remove its station agent at Eholt station, in the province of British Columbia, subject to and upon the condition that a caretaker be appointed to see that the station is kept clean, and heated and lighted when necessary, for the accommodation of passengers on the arrival and departure of trains, and to care for L.C.L. freight and express shipments.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 28860.

In the matter of the General Order of the Board No. 119, dated January 31, 1914, and the application of the Grand Trunk Railway Company of Canada, hereinafter called the "applicant company," for authority to remove its station agent at Glen Huron, Ont., and to make the said station a flag station.

File No. 4205.225.

SATURDAY, the 4th day of October, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the applicant company be, and it is hereby, granted leave, pending further order, to remove the station agent at Glen Huron, in the province of Ontario, subject to and upon the condition that a caretaker be appointed to see that the station is kept clean, heated, and lighted, when necessary, for the accommodation of passengers on the arrival and departure of trains, and to care for L.C.L. freight and express shipments.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 28861.

In the matter of the General Order of the Board No. 119, dated January 31, 1914, and the application of the Grand Trunk Railway Company of Canada, hereinafter called the "applicant company," for authority to remove its station agent at Wyebridge station, in the province of Ontario.

File No. 4205.224.

SATURDAY, the 4th day of October, 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the applicant company be, and it is hereby, granted leave, pending further order, to remove the station agent at Wyebridge, in the province of Ontario, subject to and upon the condition that a caretaker be appointed to see that the station is kept clean, heated, and lighted when necessary for the accommodation of passengers on the arrival and departure of trains, and to care for L.C.L. freight and express shipments.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 28866.

In the matter of the application of the Grand Trunk Pacific Railway Company, hereinafter called the "applicant company," for approval of plan showing station proposed to be erected in the city of Prince George, in the province of British Columbia, as required under the order of the Board No. 28680, dated August 20, 1919.

File No. 21418.

MONDAY, the 6th day of October, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the applicant company's standard station plan No. 6, on file with the Board under file No. 21418, showing details of the station proposed to be erected at Prince George, in the province of British Columbia, be, and it is hereby, approved.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 28858.

In the matter of the application of John A. O'Donohue, of Jockvale, Ont., for an order directing the Canadian National Railways to give Fallowfield station a train service of four trains a day, and that the night train leaving Ottawa at 10.30 p.m. (Toronto-Ottawa Line) be made to stop at Fallowfield; and the order of the Board No. 27749, dated October 7, 1918, made herein.

File No. 28225.

MONDAY, the 6th day of October, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the proposed time-table of the Canadian National Railways, effective October 5, 1919, providing for a local train eastbound, due at Fallowfield at 11.33 a.m., and westbound at 5.21 p.m., be, and it is hereby, approved; the train due to leave Ottawa at 12.30 p.m. daily, except Sunday, to stop at Fallowfield on flag signal for passengers destined to points west of Harrowsmith; and the train eastbound, due to leave Toronto at 9.30 a.m., to stop at Fallowfield when necessary to allow passengers from points west of Harrowsmith to detrain; and that Order No. 27749, dated October 7, 1918, be, and it is hereby, rescinded.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 28855.

In the matter of the application of the Quebec, Montreal and Southern Railway Company, hereinafter called the "applicant company," under section 334 of the Railway Act, 1919, for approval of its Standard Maximum Passenger Tariff, C.R.C. No. 274, effective October 19, 1919.

File No. 6679.3.

TUESDAY, the 7th day of October, A.D., 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

The said Standard Passenger Tariff having been filed on the basis permitted by the Board in its Order No. 28837,—

It is ordered: That the applicant company's said Standard Maximum Passenger Tariff, C.R.C. No. 274, effective October 19, 1919, be, and it is hereby, approved, subject to compliance with the requirements of section 334 of the Railway Act, 1919.

F. B. CARVELL,
Chief Commissioner.

GENERAL ORDER No. 273.

In the matter of the applications of the Grand Trunk and the Canadian Pacific Railway Companies, hereinafter called the "applicants," for an order extending the time for one year from the 30 September, 1919, within which they may equip their freight cars with safety appliances as required by the General Order of the Board No. 128, dated July 20, 1914.

File No. 11654.

WEDNESDAY, the 8th day of October, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, October 7, 1919, the applicants, the Canadian National Railways, Brotherhood of Locomotive Engineers, and Brotherhood of Locomotive Firemen and Enginemen being represented at the hearing, and what was alleged,—

It is ordered: That the railway companies subject to the jurisdiction of the Board be, and they are hereby, granted an extension of time until the 30th day of September, 1920, within which to make the changes required under the said General Order No. 128, dated July 20, 1914; the railway companies to continue their present practice of filing with the Board monthly reports of the progress made in complying with the requirements of the said order.

F. B. CARVELL,
Chief Commissioner.

CIRCULAR No. 181.

File No. 29672—Filling in of Trestles by Railways.

October 3, 1919.

I am directed by the Board to ask that railway companies, subject to its jurisdiction, show cause why a general order should not be made requiring railway companies to obtain permission from the Board before filling in trestles which landowners or farmers had made use of as undercrossings.

It frequently happens that after a railway starts filling in a trestle some interested landowner writes to the Board that his rights to an undercrossing are being infringed and requesting an investigation that could easily have been made before the work started, if the railway had notified the Board that it intended to undertake the work.

By order of the Board.

A. D. CARTWRIGHT,
Secretary.

TO ENSURE THE FRUITS OF VICTORY
BUY VICTORY BONDS

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. IX

Ottawa, November 1, 1919

No. 16

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Western Canadian Slack Coal Rates.

File No. 27425.17.

RULING.

The ruling of the Board in this matter was communicated to the parties concerned by letter dated October 11, 1919, as follows:—

"Referring to applications made to the Board by various western municipalities that railway companies operating in the provinces of Saskatchewan and Alberta be required to establish a lower basis of rates on slack coal than now published uniformly on all grades of coal, I enclose, herewith, a copy of the report of the Board's Chief Traffic Officer, dated the 2nd instant, and am directed to say that on the facts as submitted the Board does not feel justified in giving the direction as requested.

"The Board, if the facts warranted it in directing a reduction in rate, could not direct that the rate should be limited to power companies alone. In the early days of the Board, as far back as October, 1904, there was before it an application of the Grand Trunk Railway Company for a ruling as to whether it would be allowed to continue a lower freight rate basis on bituminous coal at certain points on its railway to manufacturers as compared with the rates charged to dealers or consumers; and the Board there held that such differential treatment was not justified, and that a lower rate basis for manufacturers could be granted only if the same rate was made to all its patrons, dealers, consumers, and manufacturers alike.

Yours truly,

A. D. CARTWRIGHT,
Secretary."

Report of the Chief Traffic Officer of the Board.

These several applications ask the Board to require the railway companies operating in the provinces of Saskatchewan and Alberta to establish a lower basis of rates on slack coal than now published uniformly on all grades of coal. The railway companies oppose the applications.

The present schedules originated under the judgment of the Board in the *Western Rates Case* delivered April 6, 1914.

The *Fifteen Per Cent Case*, effective March 15, 1918, added 15 cents per ton, and the Order in Council, P.C. 1863, further increased the rates as follows:—

Rate 49 cents per ton and under, increased..	15 cents per ton.
" 50 to 99 cents, increased..	20 "
" 100 to 199 cents, increased..	30 "
" 200 to 299 cents, increased..	40 "
" 300 cents or higher, increased..	50 "

A similar application was heard by the Board at Edmonton, June 11, 1918, and was refused by Order 27460, July 20, 1918, under judgment written by the ex-Assistant Chief Commissioner.

The present applications appear to me to be in effect applications for some measure of relief from the provisions of the Order in Council, and to relate to questions of policy rather than rate fixing *per se*, this being referred to in Mr. Scott's judgment.

The railways rely on the rate uniformity laid down in the *Western Rates Case* and on the more recent judgment of the Board; and also contend that a preferential rate would result in heavy freight undercharges; in other words, opportunity would be afforded for disguising run-of-mine coal in the cars with a top covering of slack. This may or may not be mere conjecture; but it occurs to me, although I may be wrong, that depreciation might result owing to intermixture of the slack with the good coal during transit, and if so, that this would operate as a set-off against the advantage gained by the difference in rates.

Slack coal has no preferred rates in Canada. In April of last year, when the previous case was under consideration, I wired the Chief of Tariff Division of the Interstate Commerce Commission as follows:—

"Can you tell me in general way whether American carriers charge lower rates on bituminous coal screenings or slack than on lump or run-of-mine coal." The following reply was received:—

"Rates bituminous coal from eastern and central western collieries apply generally on all kinds, no distinction being made between slack, lump or run-of-mine, except in few isolated cases involving short hauls."

The list of preferred slack rates furnished by Mr. Prouty, Director of Public Service and Accounting, United States Railroad Administration, attached to the Saskatoon application and read into the evidence there, are probably examples of the "few isolated cases" referred to by the Chief of Tariff Division. Disregarding the anthracite examples, the lack of underlying basis will be noted. From Johnstown, Pa., to Chicago and St. Louis, the rates apply to all sizes. From Palasade, Col., to Denver, the slack rate is the same as for lump, egg and run-of-mine; and to Montrose, Col., the nut and slack rates are the same. Where differences exist they are anything but uniform, running from 25 to 50 and even 90 cents in favour of slack. I have no doubt that local conditions dictated these exceptional rates.

The opinion of the Interstate Commerce Commission is stated in *34 I.C.C. 414, Alpha Portland Cement Co. v. B. & O. and Penn. R.R.'s*. Complaint was made against a slack-coal rate as unreasonable, and request was made for differential rates between slack and other grades of bituminous coal. The case was dismissed, the Commission saying:—

"The remaining question is that of a differential between slack and other sizes of bituminous coal, complainant's contention being based on difference in value and the impracticability of storing slack coal. It has not been the custom of carriers in this section to maintain such a differential, and in view of the fact that the loading of slack is substantially lighter than that of other varieties of bituminous coal, and that it is coming more and more into demand due to the increasing use of mechanical stokers, there appears to be neither commercial nor transportation necessity for requiring its establishment. Difference in value, which it appears has decreased somewhat in the past few years, would not, in our opinion, justify it."

Respectfully submitted.

J. HARDWELL,
Chief Traffic Officer.

OTTAWA, October 2, 1919.

Application of the city of Kingston, the Kingston Board of Trade, the municipal corporation of the town of Brockville, the Brockville Dairymen's Board of Trade, the town of Gananoque, and the Board of Trade of Gananoque, Ont., for an Order directing the Grand Trunk Railway Company to restore trains Nos. 31 and 32 between Brockville and Belleville, which were discontinued September 28, 1919.

File 27563.33.

JUDGMENT.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

What is involved is the contention that the Brockville-Belleville local service as afforded by trains Nos. 31 and 32 should be continued.

Representations were made by counsel on behalf of the city of Kingston that it was of importance to have the service continued. The city of Brockville, by counsel representing it and other municipalities interested, contended that the needs of the High School pupils and the traffic in milk were important factors to be considered. The same position was also set out in written submissions of the town of Gananoque. It was also stated by the town of Gananoque that the number of passengers carried by this train was about 4,500 a month.

The exact figures submitted by the Grand Trunk show for 126 days a total of 16,466, or an average on an operating period of 26 days per month of approximately 3,400.

Without the service furnished by the trains in question, the service rendered between Brockville and Belleville in both directions is as follows:—

BELLEVILLE TO BROCKVILLE.

No. 6	Lv.	11.10 a.m.	Ar. Kingston Junction	12.32 p.m.	Ar. Brockville	2.10 p.m.
No. 14	"	12.06 p.m.	"	1.27 p.m.	"	2.34 p.m.
No. 28	"	5.35 p.m.	"	7.06 p.m.	"	8.40 p.m.
No. 18	"	12.20 p.m.	"	1.55 a.m.	"	3.20 a.m.
No. 16	"	1.51 a.m.	"	3.08 a.m.	"	4.20 a.m.

BROCKVILLE TO BELLEVILLE.

No. 27	Lv.	8.35 a.m.	Ar. Kingston Junction	10.02 a.m.	Ar. Belleville	11.40 a.m.
No. 1	"	12.37 p.m.	"	2.02 p.m.	"	2.56 p.m.
No. 7	"	2.00 p.m.	"	3.25 p.m.	"	4.50 p.m.
No. 19	"	11.20 p.m.	"	12.43 a.m.	"	2.10 a.m.
No. 13	"	2.07 a.m.	"	3.17 a.m.	"	4.27 a.m.

For the 126 days of train operation between May 5 and September 24, the total receipts amounted to \$12,020, or an average of approximately \$95 per day.

In the judgment of the Chief Commissioner in the matter of the train service between Richmond and Coaticook, province of Quebec, File 27563.19 figures were submitted showing the out-of-pocket operating costs of the train, these figures as thus defined being, of course, exclusive of any contribution to overhead expenses.

The out-of-pocket costs of trains Nos. 31 and 32 between Belleville and Brockville computed in exactly the same way as accepted in the judgment in the Richmond-Coaticook service case give a total of \$164 per day, as against earnings of \$95.

In view of the disparity between the earnings and the out-of-pocket costs and having in mind the existing train service, an Order for the reinstatement of trains Nos. 31 and 32 would not be justified on the facts before us.

October 9, 1919.

The Chief Commissioner and the Deputy Chief Commissioner concurred.

ORDER No. 28878.

In the matter of the Order of the Board No. 20500, dated October 1, 1913, authorizing the Canadian Northern Ontario Railway Company to construct its railway across certain streets in the town of North Bay, in the province of Ontario.

And in the matter of the application of the town of North Bay, Frank Decicco, Mary Decicco, and others of North Bay, hereinafter called the "applicants," for compensation arising from the construction of the said railway through the town of North Bay.

File Nos. 18402.78 to 18402.85; 18402.87 to 18402.94; and 18402.96 to 18402.100.

THURSDAY, the 2nd day of October, A.D., 1919.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, December 16, 1918, in the presence of counsel for the applicants and the Canadian National Railways, and what was alleged; the following, hereinafter called the "claimants," namely: G. A. Bell, Miss K. McHale, L. Conte, M. Clavier, John G. Wells, S. Zimbalato, John Clentino, Reverend A. Renando, B. S. Leak, Mrs. T. Duff, Neil Curry, John Carey, C. E. Hammond, Thomas Wallace, R. Wallace and Son, P. Adams, William Ross, John Ferguson, John Kerr, D. J. Morland, J. M. McPherson, F. Decicco, Mary Decicco, Thomas Taylor, Parks and Morland, E. C. Rheaume, D. Demlis, William Cuthbertson, Mrs. Martha Cuthbertson, Isabella Cameron, P. H. Phippen, A. Lamourie, J. P. Hansen, C. M. Reynette, O. Conte, John McManus, C. H. McColgan, George McDonald, Margaret Rogers, Mrs. Hugh Ritchie, W. M. Rathwell, Ray W. Banks, Mrs. J. W. Banks, A. E. Coombs, Benjamin Biggs, M. Guenette, Amable Goulet, D. St. Germain, George Haley, William Roche, Angelo Chirico, M. Lafontaine, Mildred A. Morland, Louise Petrolia, Sam Repepi, J. Wilfred Seguin, Mary Sculland, Craig, Leak & McPherson, W. Hogen, John Hunt, George E. Hay, Miss A. Houlihan, Noble Lawrence, John McCallum, J. M. McPherson, David Truchon, Jennie F. Ferguson, Teresina Palangio, Mrs. Elizabeth McDonald, Margaret Cameron, Grant Laface, Angelo Antonia Cerisano, Concetta Conte, C. E. Coleman, George Leach, Dr. Dudley, Mrs. James Nichol, E. H. Shepherd, Frank Demarco, John McColeman, T. H. Winters, G. Cimino, Ellen G. Shepherd, J. Ellis, L. Shea, J. Congeano, E. Virgili, Peter Pelangio, J. W. Deegan, Walter Wright, and W. H. Maund, having filed with the Board consents thereto respectively; counsel for the Canadian National Railways also consenting, and waiving, as to the claimants and their claims against the said company, any question of the operation of any statute of limitations, and having undertaken that the company will pay such damages as may be awarded by the Board, upon the report of such officer of the Board as may be named by the Board to determine the same, to such of the above named claimants as are owners of property affected by the said Order No. 20500, or anything lawfully done thereunder, and are, in respect to such property, respectively, legally entitled to recover damages or compensation under the Railway Act, 1919, and the Municipal Act, or either of the said Acts,—

It is ordered as follows:—

1. That Thomas L. Simmons, the Assistant Chief Engineer of the Board, be, and he is hereby, appointed to determine:—

(a) Who, if any, of the above named claimants, is entitled to damages under the Railway Act, 1919, or the Municipal Act by reason of his or her property being affected by the said Order No. 20500 or anything lawfully done thereunder.

(b) The amount of damage suffered by any of the above named claimants to his or her property as aforesaid.

2. That any of the above named claimants or the Canadian National Railways be at liberty to raise any objection before this Board as to whether the said damages awarded are or are not legally recoverable under the Railway Act, 1919, and the Municipal Act, or either of the said Acts.

3. That the said Thomas L. Simmons be authorized and directed to give all necessary notices, take all necessary proceedings, and hear all parties interested, and to take such further steps as may enable him to make a full report to the Board upon the matters herein referred to him; and that, on the filing of the said report, any party interested may be heard before the Board in respect thereto.

4. And, the Canadian National Railways having consented thereto, it is further ordered that the said company do pay to the claimants, respectively, such amounts, if any, as may be finally directed herein by the Board.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 28881.

In the matter of the application of the Canadian Pacific Railway Company, as lessee, exercising the franchises of the New Brunswick Railway Company, hereinafter called the "applicant company," under sections 181, 182, 252, and 256 of the Railway Act, 1919, for authority to construct, maintain, and operate two industrial siding at mileage 56.8, Edmundston subdivision, in lot 19, in the town of Edmundston, county of Madawaska, and province of New Brunswick, and connection therefrom to the tracks serving the property of the Fraser Company, Limited, which connection will cross at grade the public highway and the Temiscouata Railway, and will replace the siding originally serving the said premises—all as shown on the plan, profile, and book of reference combined dated St. John, March 14, 1919—deposited in the registry office for the county of Madawaska, at Edmundston, June 14, 1919, on file with the Board under file No. 29473.

THURSDAY, the 9th day of October, A.D., 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, September 16, 1919, in the presence of counsel for the applicant company, and the Temiscouata Railway Company, the Fraser Companies, Limited, being represented at the hearing, and what was alleged; and upon reading the written submissions filed, and the agreement, dated March 4, 1917, between Fraser Limited, and the Temiscouata Railway Company, a copy of which is on file with the Board, publication of notice of the application being hereby dispensed with,—

It is ordered: That the applicant company be, and it is hereby, authorized to construct, maintain, and operate two industrial sidings at mileage 56.8, Edmundston subdivision, in lot 19, in the town of Edmundston, county of Madawaska, and province of New Brunswick, and connection therefrom to the tracks serving the property of the Fraser Company, Limited, the said connection to cross, at grade, the public highway (Victoria street) and the Temiscouata Railway, as shown on the said plan, profile, and book of reference combined on file with the Board under file No. 29473, subject to and upon the following conditions, namely:—

1. That the applicant company, at its own expense, insert a diamond in the track of the Temiscouata Railway Company at the said crossing.

2. That the said crossing be constructed, and until further Order, if any, by the Board, operated, in accordance with the directions of the Chief Engineer of the Board.

3. That the question of the protection, if any, to be provided at the said crossing be, and it is hereby, reserved for further consideration by the Board.

4. That the crossing of Victoria street be constructed in accordance with "The Standard Regulations of the Board Affecting Highway Crossings, as amended May 4, 1910."

5. That the said sidings be constructed and completed within three months from the date of this Order.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 28882.

In the matter of the application of the Edmonton, Dunvegan & British Columbia Railway Company, hereinafter called the "applicant company," under section 188 of the Railway Act, 1919, for approval of the location of its station at Alcomdale, in the province of Alberta, as shown on the plan dated Edmonton, September 2, 1919, on file with the Board under file No. 29548.

THURSDAY, the 9th day of October, A.D., 1919.

S. J. McLEAN, Assistant Chief Commissioner.
A. C. BOYCE, K.C., Commissioner.

Upon reading the submissions filed, and the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the location of the applicant company's station at Alcomdale, in the province of Alberta, as shown on the said plan on file with the Board under file No. 29548, be, and it is hereby, approved; and that the applicant company be, and it is hereby, required to maintain stations, with the facilities already established, at Mearns, Mileage 28.5, and at Busby, mileage 34.7.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 28883.

In the matter of the application of the Canadian Association of Ice Cream Manufacturers, hereinafter called the "applicants," for a reduction in the express classification of ice cream from the first class to the second class.

File No. 29040.2

THURSDAY, the 9th day of October, A.D., 1919.

S. J. McLEAN, Assistant Chief Commissioner.
A. C. BOYCE, K.C., Commissioner.
J. G. RUTHERFORD, C.M.G., Commissioner.

Upon hearing the matter at the sittings of the Board held in Toronto, February 5, 1919, and in Ottawa, March 19, 1919, the applicants, the Express Traffic Association of Canada, the Canadian Manufacturers' Association, and the Boards of Trade of Toronto and Montreal being represented at the hearings, and what was alleged; and upon reading the written submissions filed,—

It is ordered: That the application be, and it is hereby, dismissed.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 28891.

In the matter of the complaint of the Eastern Townships Associated Boards of Trade against the discontinuance by the Grand Trunk Railway Company of the operation of its local train, known as the "Scoot," between Richmond and Coaticook, in the province of Quebec.

File No. 27563.19

FRIDAY, the 10th day of October, A.D., 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, October 7, 1919, the complainants and the Railway Company being represented at the hearing, and what was alleged,—

It is ordered: That the Grand Trunk Railway Company be, and it is hereby, directed to restore the service of its passenger train, known as the "Scoot," between Richmond and Sherbrooke, in the province of Quebec, effective October 20, 1919, to May 1, 1920; the company to make monthly reports to the Board of the actual receipts and expenditures of such train service from all sources; and that the said railway company be, and it is hereby, granted leave to apply to the Board for a discontinuance of the said service before the expiration of the date herein provided for.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 28892.

In the matter of the consideration of the question of the protection to be provided at the crossing of Renfrew street by the Canadian Pacific Railway, at Renfrew, Ont.

File No. 26727.34

FRIDAY, the 10th day of October, A.D., 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, September 17, 1919, in the presence of Counsel for the Canadian Pacific Railway Company, and what was alleged; and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the Canadian Pacific Railway Company be, and it is hereby, prohibited from leaving cars standing on the north siding at Renfrew street, in the town of Renfrew, province of Ontario, on either side of the street, nearer than one hundred feet from the street line; and that when freight trains or switching operations require the use of the south siding and it is necessary to uncouple cars to clear Renfrew street, the cars on both sides be left clear of the street line for a distance of at least one hundred feet; the said siding not to be used for the storage of cars at any time.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 28906.

In the matter of the application of the Henderson Farmers' Lime, Limited, of Woodstock, Ont., for suspension of the proposed increase in rates on agricultural lime or stone dust from Kirkfield, Ont.

And in the matter of the Order of the Board No. 28073, dated February 5, 1919, suspending the Grand Trunk Railway Company's supplement No. 16 to tariff C.R.C. No. E-4024 and the cancellation of item No. 195 in the Canadian Pacific Railway Company's supplement No. 14 to tariff C.R.C. No. E-3551.

File No. 26786.

SATURDAY, the 11th day of October, A.D., 1919.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Toronto, June 5, 1919, and in Ottawa, July 8, 1919, the complainant company, Crushed Stone, Limited, Ontario Agricultural College, Canadian Manufacturers' Association, Grand Trunk and Canadian Pacific Railway Companies, and the Toronto Board of Trade being represented at the hearings, and what was alleged; and upon reading the written submissions filed,—

It is ordered: That the Grand Trunk Railway Company's supplement No. 16 to tariff C.R.C. No. E-4024 and the cancellation of item 195 in the Canadian Pacific Railway Company's supplement No. 14 to tariff C.R.C. No. E-3551 be, and they are hereby, disallowed.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 28915.

In the matter of the application of the Chatham, Wallaceburg and Lake Erie Railway Company, hereinafter called the "applicant company," under section 330 of the Railway Act, 1919, for approval of its Standard Freight Tariff C.R.C. No. 576, effective November 8, 1919.

File No. 28439.9.

SATURDAY, the 18th day of October, A.D. 1919.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the applicant company's Standard Freight Tariff, C.R.C. No. 576, effective November 8, 1919, on file with the Board under file No. 28439.9, be, and it is hereby, approved; the said tariff, together with a copy of this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

S. J. McLEAN,
Assistant Chief Commissioner.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Complaint of the Board of Trade of Woodstock, N.B., against the rate charged by the Canadian Pacific Railway Company on coal from Minto, N.B.

File 27425.1.

JUDGMENT.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

The following unfinished memorandum of reasons for judgment in this case was prepared by the ex-Chief Commissioner:—

"The complaint which is made by the Board of Trade of Woodstock, N.B., against the Canadian Pacific Railway Company, was heard at a sittings of the Board held in St. John on July 22, 1918. At the hearing not only were coal rates from Minto attacked, but also coal rates from Bangor to Woodstock.

"The rate from Minto to Woodstock was attacked on the ground that it is unreasonably high and on the further ground that it is discriminatory. No direct evidence was introduced to show that an undue profit is made by the carrier, but the submission as to unreasonableness was based on the fact that coal was carried from Minto to St. John, a movement of approximately the same distance as to Woodstock, for \$1.10 a ton, when the Woodstock rate was \$1.85 a ton, and on the ground that the rate to Houlton was \$1.12 a ton at a time when Woodstock was charged \$1.60 a ton, although the haul to Houlton is 19 miles farther than the Woodstock haul.

"In effect, the submission is made that if these movements to Houlton and St. John could be made at the rates quoted, the difference can be made at cost in order to meet competitive conditions: that the difference in the cost to St. John of 75 cents and in the case of Houlton of 48 cents gives an entirely unreasonable and exorbitant profit to the railway on the Woodstock movement.

"The rate is attacked as being discriminatory on the same grounds and the further instances given of the movement to Grand Falls. Coal, both for Grand Falls and Woodstock is carried through Newburg Junction. The distance from that point to Woodstock is some 4 miles and the distance thence to Grand Falls some 75 miles, but the rates were quoted as being similar, being but 10 cents greater to Grand Falls.

"Judgment was reserved; and since the hearing the Hartt Boot & Shoe Company of Fredericton have intervened, as well as the Canadian Manufacturers' Association on behalf of the Hartt company; and at the request of the association, who desired to go into the matter for the purpose of making further submissions, the matter has been held over.

"The traffic department of the Canadian Manufacturers' Association have since advised that there are no further submissions they can make.

"The municipality of the city of Fredericton has also complained against the rate on coal from Minto to Fredericton.

"The mines are situated on the Fredericton and Grand Lake Coal and Railway Company's line. This company was incorporated under an Act of the province. As it has not been declared to be a work for the general advantage of Canada, the company is not subject to the jurisdiction of the Dominion Parliament or of this Board.

"The line has been built with the proceeds of bonds guaranteed by the province, which assisted the construction looking to the further development of the mines at Minto, not only for the benefits directly resulting to the province from mine operations, but also with a view, by the substitution of a more direct route, of enabling coal to be distributed at a lower freight rate.

"Prior to the construction of the line and its operation on September 1, 1913, if Woodstock had bought coal at Minto, the coal would have been routed via the New Brunswick Coal and Railway Company's line and the Canadian Government Railway to St. John and thence by the Canadian Pacific Railway. The rate for the movement was \$2.33, while the tariff put into effect on the first September, 1913, over the route now in question provided a rate of \$1.60 a ton.

"Like reductions were secured to other New Brunswick points similarly reached. While the company is maintained as a separate corporate entity and makes its annual returns as such, the system is leased to the Canadian Pacific. The Fredericton company made this lease under the authority of its provincial Act. The lease is dated November 4, 1914, and runs for a period of 999 years. The rent secured is payable by the Canadian Pacific Railway Company to the provincial Government, and it is stated that the rent in the past has not produced enough fully to discharge the interest obligations of the province.

"The rent payable is a sum equal to 40 per cent of the line's gross earnings. Under the provisions of the lease, the Canadian Pacific may fix, regulate and amend the tariff of rates and tolls, and the proper officers of the Fredericton company are obliged to sign any tariffs that the Canadian Pacific may desire, subject to the following limitation:—

For the carriage of freight and live stock, unless otherwise agreed or fixed by competent authority, the rates and tolls specified in the local freight tariff generally in effect from time to time on the lines operated by the lessee in New Brunswick, except in the case of freight and live stock interchanged with the lessee at Gibson, on which traffic the said rates shall be the pro rata mileage proportion of the demised railway of the joint earnings of the said railway and the lessee from such interchange traffic, subject to the following charges, which shall, except as hereinafter provided and unless otherwise mutually agreed by the minimum charges for the carriage of such traffic over the demised railway or any part of it:—

Distance. Miles.		Minimum charges. Classes in cents per 100 pounds.									
Over.	Not over.	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.
0	5	4	4	3	3	2	2	2	2	2	2
5	10	5	4	4	3	3	3	2	2	2	2
10	15	6	6	5	4	3	3	3	3	3	2
15	20	7	6	6	5	4	3	3	3	3	3
20	25	8	7	6	5	4	4	3	4	4	3
25	30	9	8	7	6	5	4	4	4	4	3
30	35	10	9	8	7	5	5	4	4	4	3

Provided, however, that in any case when any such interchanged traffic (except as hereinafter provided), is carried more than fifty miles beyond Gibson over any line of railway owned, leased, or operated by the lessee, other than the demised railway, the said minimum charges shall be reduced to the extent necessary to make the gross revenue of the lessee from such other line or lines of railway not less than the gross revenue of the demised railway in each such case, provided, however, that the said minimum charges shall not in any such case be reduced more than one-half; and provided further that irrespective of the distance beyond Gibson which materials and supplies, including coal, for the use of the lessee, for or in connection with any railway owned, leased or operated by it, other than the demised railway, are carried over any such railway, the said minimum charges shall be the rates to be charged for the carriage of such materials and supplies, including coal, over the demised railway, or any part of it, and the amount of such charges shall be credited to the gross earnings of the demised railway; and provided further that materials and supplies, including coal, used on or in connection with the working and maintenance of the demised railway shall be carried thereon free of charge.

"Woodstock coal comes from Minto via Gibson and Fredericton. The movement is over 35 miles to Fredericton and as a result the Fredericton company and the provincial Government are entitled to have a tariff maintained by the Canadian Pacific Railway Company of 3 cents a 100 pounds, or 60 cents a ton.

"The position is exactly the same in so far as movements to any other points through Gibson are concerned, subject to the provision that where the Canadian Pacific haul is more than 50 miles, the Fredericton company's proportion is to be reduced to such an extent as may be necessary to the end that the Canadian Pacific earnings will not be less than the Fredericton company, with the limitation that in no case shall any necessary resultant reduction be greater than one-half the standard earnings to the Fredericton company.

"The lease is still in effect. The only departure from it that the Board is advised of is a special arrangement made under which an arbitrary of 30 cents a ton is accepted by the local line for deliveries at points where this combination was necessary, in order to enable the Minto mines to compete with coal from the south.

"As between the Canadian Pacific on the one side and the local authority on the other, any adjustment of rates on the Fredericton line can only be arrived at by agreement.

"The circumstances here are very similar to those in the *Quebec Central Railway and the C.P.R. Case*, reported in *15 Canadian Railway Cases*, 105, in which it was held that the Board had no control over the rates charged by the Canadian Pacific Railway on the Quebec Central—the leased provincial line. Applying, therefore, the principle laid down there to the facts in this case, the Board has no jurisdiction which would enable it, even if the conditions warranted (at the moment they do not), to make a reduction in the minimum rates reserved under the lease. As a result, the Board can take no action on the complaint of Fredericton, and that complaint is dismissed."

The material points as to the rate situation may be summarized under two headings:—

(1) That the rate from Minto to Woodstock was unreasonably high. This phase of the complaint was related to the rates to Houlton, Maine, and St. John, N.B. Comparisons were made on a mileage basis and it was alleged that these comparisons furnished criteria of discrimination in respect of the rate from Minto to Woodstock.

(2) That the rate from Minto to Fredericton was unreasonably high.

In the memorandum of the ex-Chief Commissioner above quoted, the rate situation is covered by the provisions of the lease as set out.

The movement on the Fredericton Grand Lake Coal and Railway Company's line, hereinafter called the Fredericton company, is predominatingly one of coal. The following excerpt from a letter submitted by the Canadian Pacific Railway Company is pertinent in this connection:—

“Referring to your letter of the 3rd instant:—

“I have now received a statement of cars handled between Minto and Gibson for the months of January and June, 1918, which is as follows:—

		January cars.	June cars.
Coal,	Minto to Gibson.. . . .	341	377
Coal,	Minto to Gibson.. . . .	105	97
Other freight,	Minto to Gibson.. . . .	118	134
Empty cars,	Gibson to Minto.. . . .	541	602
Loaded cars,	Gibson to Minto.. . . .	57	57
Totals.. . . .		1,162	1,267

“It will be seen from this that the coal traffic amounted, in January, to 77.96 per cent of the total outward movement, and practically 90 per cent of the inward movement during the same month consisted of empty cars. Similarly, during June the outbound coal traffic amounted to 79.07 per cent of the total traffic, and the percentage of empty cars on the inward movement was even greater.”

With reference to the Houlton situation, this has changed. At Houlton, on the Canadian Pacific Railway, in the State of Maine, some 19 miles beyond Woodstock, the Canadian Pacific Railway Company meets at that point the competition of the Bangor & Aroostook Railway from Bangor, Maine. As Bangor, Maine, is not a coal originating point, there must be borne in mind the transportation charges from the Pennsylvania and Virginia mines necessary to load coal down at Bangor; so the comparison of the rate from Minto to Houlton with the rate from Bangor to Houlton would not be conclusive. The real comparison would be between the total rate which the Minto coal had to pay to be laid down at Houlton and the total rate which the coal from United States mines had to pay to be laid down at the same point.

The rate situation has changed. The Minto-Houlton rate is now \$2.40 as compared with the Minto-Woodstock rate of \$2.15.

At the time the memorandum of the ex-Chief Commissioner was prepared, the Fredericton company was not subject to the Board's jurisdiction. By an amendment to The Railway Act, 1919, contained in sub-section (c) of section 6, the Fredericton company as a result of its relations to the Canadian Pacific Railway Company under the lease became a work for the general advantage of Canada.

As a result of this, powers of control in respect of the rates local to the line of the Fredericton company, which were not possessed by the Board at the time of the hearing, are now provided for. As a condition precedent to exercising the control over special rates, standard tariffs have, in compliance with the Railway Act, to be filed by the railway for the Board's approval. The Board is advised that these standard tariffs will be filed as soon as the appointment by the Government of New Brunswick of officers to issue these tariffs has been obtained.

At the time of the hearing, the Fredericton company not then being subject to the Board's jurisdiction, the Board had no power to join it as a party to a joint rate arrangement, or to deal in any way with the portion of the joint rate received by it.

The Railway Act as amended in 1919 has changed the obligations of the railway as to the filing of joint tariffs. Under section 233 of the former Act, provision was made that where the traffic was to pass over any continuous route in Canada, operated by two or more companies, the several companies *must* agree upon a joint tariff for

such continuous route. Section 336 of the Railway Act, 1919, dealing with the subject matter of joint tariffs provides that where traffic is to pass over any continuous route in Canada, operated by two or more companies, the several companies *shall* agree upon a joint tariff for such continuous route. The matter of having a date fixed for the filing of the joint tariffs so provided for under section 336 has been listed for hearing.

The status of control has been entirely changed since the hearing. There is now provision for control of the rates local to the Fredericton company.

Sub-section (c) of section 6 of the Railway Act, 1919, in virtue of which the Fredericton company becomes a work for the general advantage of Canada, does not merge the Fredericton company into the Canadian Pacific Railway Company in such a way that the movement from the line of one company to the lines of another constitutes a single line haul. While the Fredericton company is to be a work for the general advantage of Canada its corporate entity is not eliminated. Consequently, the inter-line movement as between the Fredericton company and the Canadian Pacific Railway Company must be treated as a two-line haul.

The filing of joint tariffs, as pointed out, is now a statutory obligation. When the provisions of the Railway Act as to the filing of standard tariffs have been complied with and joint rates have also been put in, then the matter will be gone into further; and if the rates so filed do not satisfactorily take care of the situation, it will be necessary to afford an opportunity for a further hearing.

The Deputy Chief Commissioner and Commissioners Goodeve and Boyce concurred.

October 21, 1919.

Complaint of Robert Patterson, Stamford, Ont., against the charge of fifty cents a ton on sand and gravel from his pit in Stamford to Niagara Falls, Ont., imposed by the Grand Trunk Railway Company.

File 25705.3.

JUDGMENT.

MR. COMMISSIONER GOODEVE:

This case was heard in Toronto on June 5, 1919. At this hearing Mr. Griffiths appeared for Mr. Patterson. He pointed out that the old rate had been 20 cents per ton, and had been in effect for some 15 years; that this rate had been increased to 50 cents per ton, making it prohibitive for them to do business at this rate. The company did not dispute these facts, but pointed out that the increases had been the result of general increases throughout the country necessitated by the increased cost in transportation.

It was shown that there had been two increases of 5 cents each brought about by the Eastern Rate and the Fifteen Per cent Cases, bringing the rate up to 30 cents per ton. The last increase of 20 cents a ton being under P.C. Order 1863 of July 27, 1918, Tariff C.R.C. E-3986, August 12, 1918.

The gravel pit operated by Mr. Patterson is 3.3 miles from Niagara Falls, Ont., and the present rate is 2½ cents per 100 pounds. This same rate is in effect on crushed stone forwarded from the Queenston Quarry Company's siding to Niagara Falls, which is approximately the same distance.

These two rates are the lowest published by the Grand Trunk in its building material tariff. The next lower rate being 2¼ cents per 100 pounds applying on crushed stone from Reebsville siding to Port Colborne, a distance of 3 miles. No other rate in the tariff referred to is less than 3 cents per 100 pounds, so that Mr. Patterson is shipping at the lowest rate published by the Grand Trunk with the exception of a switching rate published for the York Sand and Gravel Company to Toronto points. The Grand Trunk have from time to time endeavoured to raise this

special rate of the York Sand and Gravel Company, but because it was published in the switching tariff which is under investigation by the Board they were not permitted to make any change.

It will thus be seen that the rate complained against by Mr. Patterson, as compared with other rates is in itself reasonable. There is the further fact that two terminal services are included in this rate.

Judgment at the hearing was reserved, and Mr. Patterson was asked to submit any further evidence he might have with regard to these rates. The only thing submitted by him was a statement showing the comparative cost of sand delivered from two local pits situated on the outskirts of the town, and from which the purchasers had to pay for their own hauling. While this statement would apparently go to show that Mr. Patterson is unfortunately situated as regards the securing of local business, the Board could scarcely be expected to require the Grand Trunk Railway Company to meet this teaming competition.

I am of the opinion, therefore, that a case has not been made out for the reduction asked.

The Assistant Chief Commissioner and Commissioner Boyce concurred.

OTTAWA, October 24, 1919.

ORDER No. 28954.

In the matter of the complaint of Robert Patterson, of Stamford, Ontario, against the charge of fifty cents a ton on sand and gravel from his pit in Stamford to Niagara Falls, Ontario, imposed by the Grand Trunk Railway Company.

File No. 25705.3.

WEDNESDAY, the 29th day of October, A.D. 1919.

S. J. McLEAN, *Asst. Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Toronto, June 5, 1919, the complainant, the Grand Trunk Railway Company, and the Michigan Central Railroad Company being represented at the hearing, and what was alleged,—

It is ordered: That the complaint be, and it is hereby, dismissed.

S. J. McLEAN,
Assistant Chief Commissioner.

Application of the corporation of the city of Toronto, Ont., for an Order apportioning the cost of alterations to the mains of the Consumers' Gas Company of Toronto, necessitated by the construction of subways at Yonge street, Avenue Road, Bathurst street, Davenport road, Howland ave., Spadina road, Shaw street, Christie street, Dovercourt road, and Ossington ave., in connection with the North Toronto Grade Separation work.

File No. 9437.153.

JUDGMENT.

The CHIEF COMMISSIONER:

In the year A.D. 1912 this Board, of its own motion, ordered the Canadian Pacific Railway Company to make certain grade separations on its line of railway running to North Toronto, crossing a number of streets in the city of Toronto, and, at the time of

making the first Order, no distribution of the cost was finally settled. After the work had proceeded for some time, on the 12th day of November, A.D. 1914, the Board by Order No. 22855 ordered that the expense should be borne practically by the city of Toronto and the Canadian Pacific Railway Company, although a small amount was apportioned against the Toronto Street Railway with respect to Avenue road and a certain amount should be taken from the Railway Grade Crossing Fund. Of the balance, 25 per cent should be borne by the city and the remainder by the Canadian Pacific Railway Company, and, at the hearing preceding the Order I cannot find, and accept it as a fact, that the Consumers' Gas Company were present, and they were therefore, not a party to the proceedings, although without a doubt the Consumers' Gas Company know as a fact that the work was in progress because a large part had been completed before that date. After the work was entirely completed and the city's proportion paid, and after the city of Toronto had paid to the Consumers' Gas Company their charges rendered to the city in connection with the removal and replacement of their gas mains, the city of Toronto applied to this Board for an Order against the Consumers' Gas Company for the repayment of the moneys already paid to them in connection with the changes in their mains hereinbefore referred to.

The case was heard by the Board at a sittings held at Ottawa, on the 21st day of January, 1919, when the gas company claimed that this Board had no jurisdiction to make an Order against them, and that, under the decision in the *Toronto Corporation v. Consumers' Gas Company, 1916 A.C., 618*, any changes which the city corporation might desire made in the company's mains could be made only at the city's expense.

As the case was heard by Sir Henry Drayton, the former Chief Commissioner, he left an interim judgment, dated August 1st last, in which he held that this Board has jurisdiction over the subject matter and the parties, and, therefore, it will not be necessary to discuss the question of jurisdiction further.

It also appeared that there was a difference between the respective parties as to the facts of the case, as to whether the Consumers' Gas Company had received notice, and Sir Henry Drayton, therefore, decided that, under the circumstances, the case should be set down for a further hearing.

This was done, and a further hearing had on Tuesday, the 16th day of September, 1919, at which the city was represented by Mr. I. S. Fairty, the C.P.R. by Mr. E. P. Flintoft, the C.N.R. by Mr. George F. Macdonnell, and the Consumers' Gas Company by Mr. I. F. Hellmuth, K.C., and Mr. W. B. Millican. From the facts adduced and entirely regardless of the question of jurisdiction, which had been considered as hereinbefore stated, I am forced to the conclusion that the work in question was performed by the Consumers' Gas Company under contract with the city of Toronto.

It appears that the negotiations started on the 22nd of July, 1912, when a letter was written by Mr. R. C. Harris, Commissioner of Works for the city, notifying the Consumers' Gas Company that it would be necessary to know the location, size, and depth, etc., of all gas mains crossing under the C.P.R. tracks between Summerhill avenue and Dufferin street and asking the gas company for the necessary information. This was followed on the 16th of August by another letter from Mr. Harris enclosing blue prints showing the different locations, and, on the 21st of August, the gas company replied as follows:—

“August 21, 1912.”

“R. C. HARRIS, Esq.,
Commissioner of Works,
Toronto, Ont.

“DEAR SIR,—I beg to acknowledge the receipt of your favour of the 16th inst. enclosing a blue print showing proposed changes at the Avenue Road crossing of the Canadian Pacific Railway, and requesting that certain changes be made in the location of this company's gas mains in that vicinity.

“Before these changes can be begun, it will be necessary that either the city corporation or the railway company enter into agreement with this com-

pany for the payment of the expense to be incurred, as was done in the case of the grade separation on the south side of the city.

"Yours truly,

"ARTHUR HEWITT,
"General Manager."

This was replied to by Mr. Harris, on behalf of the city, on the 22nd of August as follows:—

"TORONTO, August 22, 1912.

"In reply please refer to Cost of Alterations.
"Subject—A/C North Grade Separation.
"Attention of Mr. Harris.

"ARTHUR HEWITT, Esq.,
"General Manager,
"Consumers' Gas Co.,
"City.

"DEAR SIR,—I have yours of August 21st, inst. herein.

"This work is entirely different from that carried on by the city in connection with its streets, being a railway proposition of which the city may be saddled with a portion of the cost by the Dominion Railway Board.

"Having regard for this, it is but fair that you should be paid for changes requested by us in connection with railway grade separation, and I undertake, on behalf of the city, to reimburse you for these changes, which will doubtless be apportioned by the aforesaid Board.

"Yours truly,

"R. C. HARRIS,
"Commissioner of Works."

On the 23rd of August, the gas company replied as follows:—

"August 23, 1912.

"R. C. HARRIS, Esq.,
"Commissioner of Works,
"Toronto.

"DEAR SIR,—I beg to acknowledge the receipt of your favour of the 22nd instant, in which you undertake, on behalf of the city corporation, to reimburse this company for the expense to be incurred in any necessary alteration to the location of the gas mains on Avenue road, and the connections crossing same, in the vicinity of the North Grade Separation.

"Our superintendent will watch the progress of the work of grade separation, and at the proper time will attend to the matter of changing the general location of our mains, in accordance with your requirements. It will doubtless be necessary for us to lay a temporary main while the work of altering the grade is proceeding, this temporary main to be replaced by a permanent one, whenever the circumstances may permit.

"Yours truly,

"GENERAL MANAGER."

followed by a further letter from Mr. Harris on August 28, as follows:—

“TORONTO, August 28, 1912.

“ARTHUR HEWITT, Esq.,
“General Manager, Consumers’ Gas Co.,
“Toronto.

“DEAR SIR,—This is to acknowledge receipt of yours of August 23, *re* North Toronto Grade Separation. Mr. Adams of this department will show your representative a location for temporary mains, if this is necessary.

“Yours truly,

“R. C. HARRIS,
“*Commissioner of Works.*”

There can, therefore, be no question whatever that, so far as the Avenue road crossing was concerned, it was a straight contract between the city and the Consumers’ Gas Company.

The next subway seems to have been the Davenport road about which negotiations were started by Mr. B. Ripley, engineer of grade separation, on December 31, 1912, and, after a short time, the gas company wrote Mr. Ripley under date of January 2, as follows:—

“January 2, 1913.

“B. RIPLEY, Esq.,
“Engineer, Grade Separation,
“Canadian Pacific Railway Co.,
“262 Avenue Road, Toronto.

“DEAR SIR,—

“*Alterations to Gas Mains at Avenue Road.*

“I have received your favour of the 31st ult., the contents of which somewhat surprise me. As to why you should suppose that this company would bear the expense of changing the location of its mains in a public thoroughfare, for the accommodation of the railways, I am at a loss to understand. In any event, this work is being done on the order of the city of Toronto, under an agreement that this company will be reimbursed for its outlay in connection with the alteration of its mains in connection with the Avenue Road Grade Separation.”

“Yours truly,

“GENERAL MANAGER.”

Which was followed by a letter dated April 8, from Mr. Harris, as follows:—

“TORONTO, April 8, 1913.

“ARTHUR HEWITT, Esq.,
“General Manager,
“Consumers’ Gas Co.,
“City.

“DEAR SIR,—Mr. B. Ripley, Engineer of Grade Separation for the C.P.R. Co., is anxious that you should make the necessary alterations to your mains at Davenport road, Spadina road, Howland avenue, and Bathurst street, in order that he may be in position to proceed with the construction of subways, and the raising of the tracks, at these points. He advises that he purposes commencing train filling at the locations mentioned, thereby raising the tracks at an early date. Will you kindly get in touch with Mr. Ripley at your earliest convenience, with a view to completing arrangements for the proper handling of

your utilities. Mr. Ripley will be glad to co-operate with you by showing you the railway company's plan, or giving any further assistance desired.

"I have communicated with the other public service corporations concerned to the foregoing effect."

"Yours truly,

"R. C. HARRIS,
"Commissioner of Works."

On the 16th of April, the gas company wrote to Mr. Harris as follows:—

"R. C. HARRIS, Esq.,
"Commissioner of Works,
"Toronto.

"DEAR SIR:—

"North Toronto Grade Separation.
"Attention of Mr. Power.

"I duly received your favour of the 8th inst., and have instructed our superintendent to put himself in communication with Mr. Ripley, in reference to the alterations in the location of this company's pipes, necessitated by the above work.

"As in the case of the Avenue road alterations, I shall be pleased to receive from you an undertaking that the company will be reimbursed for the expense incurred in making these alterations."

"Yours truly,

"GENERAL MANAGER."

followed by an answer on the 17th as follows:—

"ARTHUR HEWITT, Esq.,
"General Manager,
"The Consumers' Gas Co.,
"City.

"TORONTO, April 17, 1913.

"DEAR SIR,—Replying to your favour of the 16th inst., herein, this is to advise you that we will be responsible to you for your expense in connection with alterations to your mains, subject to the Order of the Railway Board covering this work, the same as in Avenue road subway."

"Yours truly,

"R. C. HARRIS,
"Commissioner of Works."

and this condition of affairs continued regarding practically all of the work until the spring of 1914 when the Ossington avenue, Dovercourt road, and Yonge street crossings were under discussion and the city took an entirely different attitude from that hereinbefore mentioned. In these cases Mr. Harris wrote the company on the 21st of March, 1914, using these words:—

"This will be your authority to make any alterations necessary, the cost of the work to be subject to any adjustment made by the Board of Railway Commissioners for Canada."

To this the gas company replied refusing to proceed and demanding a letter similar to that of the 22nd of August, 1912, above referred to. After a great deal of discussion, the Consumers' Gas Company finally agreed to go on with the work with the express reservation that they lost no rights, and the carrying out of the work was done entirely without prejudice to their claim to be paid therefor by the city, and, after the

work was entirely completed and before any application was made to this Board, they rendered to the city an account for all of the work, which was paid them by the city in due course.

I am, therefore, forced to the conclusion that this work was simply a matter of contract between the two corporations, and this Board should not interfere after the matter has been closed to force the Consumers' Gas Company to repay moneys which were paid to them by contract and even after a discussion had arisen between the respective parties as to their right to a contribution from the Consumers' Gas Company, should this Board so desire. For these reasons, the application will be dismissed.

OTTAWA, Ont.

October 16, 1919.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

I agree in the disposition as recommended by the Chief Commissioner.

The DEPUTY CHIEF COMMISSIONER:

Upon the evidence submitted at the hearing, and the statements on file, I agree that the application should be dismissed.

Commissioner Goodeve concurred.

October 27, 1919.

Train service on the Quebec, Montreal and Southern Railway—Shore Division.

File 18727.4.

JUDGMENT.

McLEAN, ASSISTANT CHIEF COMMISSIONER.

The Quebec, Montreal and Southern Railway Company has as one portion of its system a line down the south shore of the St. Lawrence from Montreal to Fortierville, a distance of 115 miles. The mileage from St. Lambert to Fortierville is 109.6 miles. From St. Lambert, the railway has trackage arrangements into the city. From St. Lambert to Sorel is 44.5 miles, while from Nicolet the distance is 76 miles.

Up to 1918, the passenger service on the Shore Division consisted of two daily trains running mornings and evenings between Montreal and Nicolet; two daily trains also ran from Nicolet to Montreal morning and evening. A local mixed completed the run between Nicolet and Fortierville at the other end of the line.

From the 1st of January, 1918, the Sunday service was cancelled. Again in April, 1918, the company further reduced its service by cancelling the morning train from Montreal and the evening train from Nicolet.

Upon the application of the Chamber of Commerce of Sorel, the Board ordered the restoration of the train service in effect prior to January, 1918, between Montreal and Sorel, such service to be put into effect on the 10th day of June, 1918; Order No. 27254 issued the 26th day of May, 1918.

A subsequent Order dated June 7, 1918, No. 27286, authorized the discontinuation of the Sunday train service in effect prior to January 1, 1918.

On the 17th August, 1918, the company applied to the Board for permission to withdraw trains Nos. 2 and 3, that is the morning train leaving Montreal and the evening train leaving Nicolet, such withdrawal to take effect on the 1st of September, 1918.

The reasons alleged by the company were that the traffic did not justify two trains a day, and that they needed the fuel, the power and the crews for more essential traffic elsewhere, meaning the southern division.

Before the application could be argued before the Board, the company found itself short of men on account of the influenza epidemic, and was allowed, pending a formal hearing, to withdraw its trains Nos. 2 and 3.

During the Christmas and New Year seasons of 1917 and 1918 the service was, on the request of the Board, temporarily reinstated.

A hearing took place at which much statistical detail was submitted in connection with the application of the railway to increase its rates. The statistical detail submitted bearing on the cost of operating of necessity had an important bearing upon the propriety of directing a change in the train service.

As pointed out in the judgment in the *Passenger Rate Case*, it had seemed proper to allow determination of this matter to stand until it was apparent whether the exceptional costs of operation which attached to the war period constituted a temporary or more enduring condition, and the result was that for the seven-month period ending July, 1919, it was abundantly apparent that the costs of operation were continuing on a higher level; and this is evidenced by the fact that during the period in question it took, on the average, 147 cents of expenditure to earn \$1 of revenue. The question whether the Board is justified in directing a rearrangement which will add to the service now existing must be tested in terms of the operating conditions facing the road.

The railway must, as a condition of operating as a railway carrying freight and passengers, afford a minimum of service, even although the result of this is operation at a loss. The service which is now rendered by the railway in connection with the carrying of passengers appears to me, however, to have carried the reduction down to the minimum, and I do not see, as at present advised, how it would be justifiable to have any further reduction. Since, however, the railway is on its present freight and passenger operations spending much more than \$1 to earn \$1 of revenue, and since, as pointed out in the judgment in the *Passenger Rate Case*, it is not in terms of the analysis there used earning on its passenger business its proportionate amount of cost, it follows that before directing an increase in the passenger service over the minimum now rendered, the Board should be satisfied as to whether the additional cost would be recouped.

The service as it existed prior to 1918 was as follows in regard to the movement from Nicolet to Montreal:—

Westbound.

No. 1—Daily, except Sunday, leave Nicolet 6.20 a.m., arrive Montreal 9.15 a.m.
No. 3— " " " " " 2.55 p.m. " " 6.15 p.m.

Eastbound.

No. 2—Daily, except Sunday, leave Montreal 8 a.m., arrive Nicolet 11.20 a.m.
No. 4— " " " " " 5.30 p.m. " " 8.30 p.m.

Sunday.

No. 5—Eastbound, leave Montreal 8.25 a.m., arrive Nicolet 11.34 a.m.
No. 7—Westbound " Nicolet 3.00 p.m. " Montreal 6.15 p.m.

The service between Fortierville and Nicolet was as follows:—

Westbound.

No. 9—Mixed, leave Fortierville 6 a.m., arrive Nicolet 8.30 a.m.

Eastbound.

No. 10—Mixed, leave Nicolet 5 p.m., arrive Fortierville 7.30 p.m.

The service now rendered between Nicolet and Montreal is as follows:—

Westbound.

No. 1—Daily except Sunday, leave Nicolet 6.30 a.m., arrive Montreal 9.45 a.m.

Eastbound.

No. 4—Daily except Sunday, leave Montreal 6 p.m., arrive Nicolet 9.20 p.m.

The service between Fortierville and Nicolet is as follows:—

Westbound.

No. 9—Mixed—tri-weekly, Monday, Wednesday and Friday—
Leave Fortierville 6 a.m., arrive Nicolet 8.30 a.m.

Eastbound.

No. 10—Mixed—tri-weekly, Tuesday, Thursday and Saturday—
Leave Nicolet 5 p.m., arrive Fortierville 7.30 p.m.

What is in effect desired by the municipalities concerned is the reinstatement of trains Nos. 2 and 3, and, in general, replacing the service as it was in 1917. On the other hand, this is objected to by the railway from the standpoint of expense.

Every curtailment of service of necessity raises objection. Where it is possible to have frequent service—the highest type of convenience—this is very satisfactory to the public and by encouraging travel reacts advantageously upon business, and no doubt is a factor of importance in developing through travel and social intercourse the amenities of life. At the same time it must be recognized that all this must be paid for, and if the service desired is of such a type as cannot be met out of the revenues of the company this must be given due weight by the regulative body.

The test of what the reinstatement of the 1917 service would mean can be checked out by checking train-mile costs.

In the hearing at Montreal, computations were submitted analyzing operating costs. While freight and passenger revenues are readily reported under separate headings, the sub-division of operating cost between freight and passenger business must of necessity, to a certain extent, be a matter of computation. Certain items may be allocatable directly; other items cannot be so allocated.

In an exhibit filed by the Quebec, Montreal and Southern Railway Company, it was pointed out that the train-mileage basis was arrived at by adding to the passenger train-mileage one-third of the mixed-train mileage, the resulting sum of passenger train-mileage amounting to 53 per cent of the total train mileage. Train mileage may be regarded as affording one reasonable index of cost. The passenger train-mile cost of \$2.77, later referred to, is, as pointed out, the computation arrived at in the exhibit referred to.

The round trip from St. Lambert to Fortierville is 218 miles. As already pointed out, St. Lambert is the point where the Quebec, Montreal & Southern tracks stop and is 6.2 miles from Montreal. The service, which it is asked should be reinstated, would mean additional train mileage of 218 miles per day. If the service on the old schedule were reinstated for six days a week the train mileage involved would be 68,234. Adding a Sunday service, the additional train-mileage for 52 days a year from Nicolet to St. Lambert would be 7,904.

In exhibit 5 filed at the hearing, a computation was given that for the first 11 months of 1918 the passenger train-mile cost was \$2.77. Taking this basis, the 68,234 passenger train miles required for the daily service, exclusive of Sundays, would have a cost of \$189,108. The business of the road is concerned with short hauls. For 1913 to 1918, the average passenger journey in miles ran from 21 and a fraction to 23 and a fraction. During the same period, the average fare received from each passenger ran from 55 cents to 61 cents.

Since, in 1918, the average amount paid by each passenger was 61 cents, the number of additional passengers it would be necessary to carry in order to meet the train-mile cost involved will be obtained by dividing this train-mile cost, as above given, by 61. This gives a total of 310,013 passengers it would be necessary to carry to offset the cost. Adding to the passenger train-mileage for week days the 7,904 passenger train-miles for Sundays would give a total of 76,138 passenger train-miles. At the average cost of \$2.77, as given, this would give a cost of \$210,902, which, divided by 61, would give the total number of additional passengers it would be necessary to carry in order to meet this increased cost. The number is 345,737.

In the figures submitted in exhibit 5, as referred to, it was set out that against the passenger train-mile costs of \$2.77 there were actual passenger train-mile earnings

for the eleven months ending November, 1918, of \$1.63. If these figures are taken as characteristic, there would be the following result from the additional train service recommended:—

Passenger train-mile costs.	\$ 210,902
Passenger train-mile earnings.	124,104
Deficit.	\$ 86,798

If, instead of taking the figure of \$2.77, an average figure of \$2 per train-mile is taken, as a test suggested by the Board's Chief Operating Officer, there would be an additional train-mile cost for a service of six days a week of \$136,468. This at average receipts per passenger of 61 cents would require the carriage of 223,717 passengers additional to offset the increased cost. If a Sunday service were included, this would require in addition, on the same basis, 25,914 passengers.

As bearing on the possibility of an increase in passenger business sufficient to recoup the additional costs involved, it may be noted that the highest figure in respect of passengers carried in the period 1913-1918 was in 1917, when 273,127 passengers were carried. The figures are for the years ending June 30. The average for the period was 254,922, while the absolute figure for 1918 was 243,371. Carrying the analysis back for the period 1908-1912, the highest figure in that period was in 1910 when 280,584 passengers were carried. The average for the period was 249,770.

The figure of \$1.63 per passenger mile in 1918 is not a conclusive test of the volume of business and its return. The extent to which this exceeds that obtaining in 1917 is in great degree due to the reduction in passenger train-miles in 1918, affording, in consequence, a smaller divisor in striking the average passenger mile earnings. The year 1917 had in force the service which it is now desired should be re-instated.

For the calendar years 1917 and 1918, the following statements as to gross earnings from passenger train service are available:—

Passenger Revenue.	1917.	1918.
Tickets.	\$ 162,608.14	\$ 132,039.13
Excess baggage.	1,103.32	976.34
Mail	5,264.75	5,181.99
Express	13,815.57	15,869.73
Other passenger train revenue.	255.50	114.90
Milk.	182.24	114.09
Total passenger train revenue.	\$ 183,229.52	\$ 154,296.18

Notwithstanding the larger volume of passenger revenue in 1917 and notwithstanding the larger part played in that year by other receipts incidental to passenger train movement, the passenger train-mile earnings for the year were only \$1.19. It is not unfair to take this as an approximate criterion of the earning power, under a reinstatement of the 1917 service.

Putting the matter in a summary way, to meet the additional train-mile costs computed on a basis of \$2 per passenger train-mile, it would necessitate the railway, on the basis of a six-day a week service, and including the number carried in 1918, having to carry a total of 467,088 passengers; and the inclusion of a Sunday service and the offsetting of its costs would necessitate adding 25,914 to this. As against these figures, attention may again be drawn to the fact that the largest passenger movements during a ten-year period were in 1917 and 1910, when the figures were 273,127 and 280,584 respectively.

On the analysis as made, it does not appear how there can be a sufficient increase in passenger business, taking into consideration the volume, average haul and average receipts per passenger, to take care of the cost the additional service would necessitate. It is further to be borne in mind that the computations do not take into consideration any profit on operation. If an operating ratio of 75 per cent is taken—and this has in various connections been taken as a reasonable operating ratio under present

conditions—the result would be to add one-third to the necessary takings. The fact that the railway instead of having an operating ratio of 75 per cent has one of 147 per cent does not justify disregarding a more normal situation.

The case for re-instatement of the train service as it was in 1917 has been earnestly pressed. Especial stress has been laid on the re-instatement of the service afforded by trains 2 and 3, referred to above. It may readily be that, under more normal conditions both as to revenue and expenditure, the existing train service might be held to be one which would not satisfactorily take care of the traffic.

The matter of the earnings of trains 2 and 3 may be measured in another way from the standpoint of the relation between the out-of-pocket costs of the service and the earnings obtained. In the case of service on the Grand Trunk between Sherbrooke and Coaticook (Board's file 27563.19), a situation was developed where (a) the need for the retention of the existing service was established, (b) the earnings were slightly in excess of the out-of-pocket costs, exclusive of any return to overhead costs.

Applying the same method as used in the above case, the round trip costs for the service performed by trains 2 and 3 on the Quebec, Montreal & Southern Railway would, as checked by the Board's Operating Department, be as follows:—

Wages of trainmen	\$ 14.33
Wages of enginemen	14.59
Overtime for station agents (estimated)	4.72
Fuel for locomotive, 4 tons at \$5.83	34.98
Lubricants . . . . .	.56
Supplies . . . . .	.71
Water	4.04
Handling	11.17
Repairs, engine	41.04
Rental	4.90
Car repairs . . . . .	.80
Car rental	20.00
	<hr/>
	\$151.84

The latest figures obtainable for the earnings of the trains in question are for the years 1915 and 1916. In 1915, train No. 2 earned 80 cents per passenger train-mile, while No. 3 earned 63 cents. This would give the following figures:—

Train No. 2, earnings	\$ 60.80
" " 3, "	48.48
Total for round trip	<hr/>
	\$109.28

For the year 1916, the figures are 72 cents and 86 cents respectively, giving the following totals:—

Train No. 2, earnings	\$ 54.72
" " 3, "	61.92
Total for round trip	<hr/>
	\$116.64

With out-of-pocket expenses \$151.84, the deficit on 1915 figures would be \$42.56 daily, or \$255.36 per week. On 1916 figures, the deficit would be \$35.20 daily, or \$211.20 per week.

In the figures as to out-of-pocket expenses as given, maintenance of equipment is included. To get at the other expenses necessary to keep the road in operation, without any payment by way of interest or dividends, the following details are available for 1918:—

Maintenance of way and structures	\$ 202,718
General expenses	36,287
Taxes	8,263
Total	<hr/>
	\$ 247,268

In order to obtain the necessary allocation for expenses attaching to passenger business, and for the reasons explained in the judgment dealing with the standard passenger fares of the railway, 28 per cent of this total is taken as representing passenger overhead expense, or a total of \$69,235. The mileage between Nicolet and St. Lambert is 37 per cent of the total mileage of the system. This percentage of the allocated passenger expense above given amounts to \$25,616, and on a daily basis this would amount to \$70 per day.

As pointed out, on 1916 figures trains 2 and 3 would fall short by \$35.20 of meeting out-of-pocket costs, charging one-half of the overhead expenses against trains 2 and 3, there being two other trains, 1 and 2, in operation, this would give a sum of \$35 to add to the deficit in respect of meeting out-of-pocket costs.

After most careful consideration of the various factors pertinent, I am unable to see how the service, on what is before us, can be reinstated, without a further increase in the already large operating deficit.

As pointed out in the judgment dealing with standard passenger rates on the Quebec, Montreal & Southern Railway, the Board has been receiving monthly statements of the operations of this road with a view to ascertaining what, if any, improvements have arisen on changed conditions. As pointed out in the judgment in question, changed conditions have not brought about decreased costs; rather the situation is that with a diminution in certain lines of general traffic which developed in connection with war activities, there has at the same time been an increase in the operating costs. The monthly statements with which the Board has been supplied are to be continued by the railway and the Board will obtain such additional information as may seem necessary; and if, on consideration of the information so filed, it appears to the Board that conditions have so improved as to warrant an increase in the train service the Board will then act of its own motion.

October 28, 1919.

The Deputy Chief Commissioner concurred.

October 29, 1919.

Application of the Canadian Car Demurrage Bureau, Montreal, Que., for a ruling on the question whether a consignee having more than one private siding is entitled to notice of arrival and 24 hours' free time for designation of the siding at which delivery is desired.

File No. 1700.264.

The question submitted to the Board was as follows:—

"A consignee who has two or more private tracks connecting with tracks of the railway at same point, and upon which the railway company performs necessary switching to place and remove cars, advances the opinion that he should be allowed 24 hours' free time after notice of arrival of a car to designate the particular track upon which he requires a car placed. Should the 24 hours' free time be granted, or should he (consignee) not be advised that he should be in a position to designate the track immediately car is offered to him for unloading."

RULING.

On the hearing of the matter at the sittings of the Board at Ottawa, on Tuesday, the 21st October, 1919, the Board decided that the rule (No. 2), as it stands, does not cover the situation raised, that is, by way of entitling a private owner to any extra time.

OTTAWA, November 6, 1919.

Complaint of F. R. Stewart & Company, Limited, Vancouver, B.C., alleging that, although restricted by the width of their premises to 33 feet of an industrial siding on which they abut, they are held to the private siding provisions of rule 2 (b) of the Car Demurrage Rules, and denied the benefit of the 24 hours of rule 3 for giving placement directions.

File No. 1700.256.

The complainants use that portion of an industrial siding serving their premises, other firms also using the same industrial siding to the extent that it also serves their premises.

The matter was considered at a sittings of the Board at Ottawa on Tuesday, the 21st of October, 1919, and the ruling of the Board was communicated to the parties by letter, dated November 5, 1919, as follows:—

RULING.

The situation is that rule 3 as it stands in the Canadian Car Demurrage Rules, approved by General Order of the Board No. 201, dated August 1, 1917, does not entitle the user of the private siding to the extra free time which is asked for in this case. The rule reads as follows:—

“Twenty-four hours (one day), after notice of arrival (exclusive of Sundays and legal holidays), shall be allowed for any or all of the following purposes, if necessary:

“(1) For clearing customs.

“(2) In the case of the consignees not served by private sidings or industrial interchange tracks, to give orders for special placement.”

ORDER No. 28921.

In the matter of the Order of the Board No. 28891, dated October 10, 1919, directing the Grand Trunk Railway Company to restore the service of its passenger train, known as the “Scoot,” between Richmond and Sherbrooke, in the province of Quebec.

File No. 27563.19.

MONDAY, the 20th day of October, A.D 1919.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

HON. W. B. NANTEL, *Deputy Chief Commissioner.*

Upon reading what is filed,—

It is ordered: That the said Order No. 28891, dated October 10, 1919, be, and it is hereby, amended by striking out the word “Sherbrooke” in the fourth line of the operative part of the order and substituting therefor the word “Coaticook.”

F. B. CARVELL,
Chief Commissioner.

ORDER No. 28946.

In the matter of the application of the British Columbia Electric Railway Company, Limited, hereinafter called the "applicant company," for approval of its standard tariffs of maximum tolls to be charged between points on its lines of railway other than the Vancouver and Lulu Island and the Vancouver, Fraser Valley and Southern Railways, for which excepted lines standard tariffs have already been approved by the Board.

File Nos. 21404.2, 21404.4, and 21404.1.

TUESDAY, the 28th day of October, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon its appearing that the rates shown in the said standard maximum tariffs are those now being charged by the applicant company—

It is ordered: That the Standard Maximum Freight Mileage Tariff C.R.C. No. 146, the Standard Passenger Tariff of Maximum Mileage Tolls on Interurban Lines, C.R.C. No. 9, the Standard Tariff of Maximum Tolls on street car lines (not including interurban lines), C.R.C. No. 8, and Express Tariff, C.R.C. No. Ex. 1, and Supplement No. 1 thereto, of the applicant company and the Vancouver Power Company, be, and the same are hereby, approved until further order of the Board.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 28949.

In the matter of the petition of certain residents of Lorie, Sask., for an Order directing the Grand Trunk Pacific Railway Company to construct a station and appoint a station agent at Lorie.

File No. 24353.

WEDNESDAY, the 29th day of October, A.D. 1919.

S. J. McLEAN, *Asst. Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading the submissions filed, and the report and recommendation of an Inspector of the Board, concurred in by its Chief Operating Officer, the railway company consenting,—

It is ordered: That the Grand Trunk Pacific Railway Company be, and it is hereby, required to construct a station building at Lorie, in the province of Saskatchewan, in accordance with the company's standard plan "A"; the work to be completed by September 30, 1920.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 28967.

In the matter of the application of the Dominion Atlantic Railway Company, hereinafter called the "applicant company,"-under section 334 of the Railway Act, 1919, for approval of its Standard Passenger Tariff of Sleeping Car Tolls, C.R.C. No. S-4, on file with the Board under file No. 9451.12.

MONDAY, the 3rd day of November, A.D. 1919.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the applicant company's Standard Passenger Traffic of Sleeping Car Tolls, C.R.C. No. S-4, on file with the Board under file No. 9451.12, be, and it is hereby, approved.

S. J. McLEAN,
Assistant Chief Commissioner.

CIRCULAR No. 182.

Inspection and testing of railway steam boilers other than locomotive boilers.

File 29110.1.

October 29, 1919.

The attention of the Board has been drawn by provincial authorities to the existing conditions with regard to the inspection of railway steam boilers other than locomotive boilers, such inspections not having been performed by provincial inspectors in one or two of the provinces for the reason that railway companies claim that in complying with the orders of this Board they have fulfilled their obligations, the result being that the protection aimed at by the different acts is defeated and the public is not safeguarded.

The Board desires that railway companies, subject to its jurisdiction, consider the situation and file with the Board an expression of opinion on the whole question raised and as to whether such inspections should be made by provincial authorities, or otherwise.

By order of the Board.

A. D. CARTWRIGHT,
Secretary.

CIRCULAR No. 183.

Condition of hand brakes on electric cars.

File 9610.

October 30, 1919.

The Board's Operating Department have examined into the condition of hand brakes on air-equipped electric cars and, in some cases, it has been found that they are not kept in proper working order. With a view to remedying the situation it is suggested that the following addition be made to clause 1 of General Order No. 56, after the word "appliances"—

"which must be maintained in good condition."

The Board would be glad to have, at an early date, the views of electric railway companies, under its jurisdiction, upon the proposed amendment.

By order of the Board.

A. D. CARTWRIGHT,
Secretary.

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The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. IX

Ottawa, December 1, 1919

No. 19

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In the matter of Special Freight Tariffs governing the weighing of carload traffic and Allowances from Track Scale Weights; and Cancellation of allowance of 1,000 pounds dunnage on Agricultural Implements, Machinery, Stoves, Street Cars, Vehicles, etc., in box or stock cars in the Tariffs proposed to become effective May, 1911.

File 8799.1 Part 3.

JUDGMENT.

COMMISSIONER GOODEVE:

At the hearing in Toronto on April 25, 1911, the late Chief Commissioner Mabee directed that the effective date of these Tariffs be postponed from the 1st day of May to the 1st day of July, 1911, and in accordance with this direction Order No. 13520 of April 27, 1911, was issued.

On complaint against this Order a hearing was held in Ottawa on June 20 and 21, 1911. At this hearing the matter was gone into very exhaustively, all the various railways being represented as well as the Canadian Manufacturers', the Canadian Lumbermen's, and the Montreal Lumbermen's Associations. A large number of witnesses were heard on behalf of both the shippers and the railway companies.

As a result of this hearing a judgment was issued by the late Chief Commissioner Mabee under date of July 14, 1911, in which Commissioner McLean concurred; and Order No. 14389 of July 25, 1911, was issued based on this judgment.

The effect of these Orders was to indefinitely postpone the effective date of Tariffs C.R.C. No. E-2312, G.T.R., and C.R.C. No. E-2067 C.P.R.

Upon the application of the Canadian Freight Association for a ruling of the Board as to the proper allowances to be made for track scale weights on various commodities, this matter was again taken up and a hearing held at Ottawa on March 18, 1913

The result of the cancellation of the Tariffs above referred to was that the allowances made in the Tariffs of the carriers previous to May 1, 1911, were continued in effect. Similar provisions are in effect to-day. As a sample of these provisions I might quote Supplement No. 7 to C.R.C. No. E-3117, C.P.R., effective July 22, 1919.

24. The following special allowances may be made to cover variations in tare of cars, caused by absorption of moisture, accumulation of ice, snow, staking, dunnage, etc., (see exceptions Notes 1 to 5), subject to minimum weights as per classification or tariff. Where these allowances conflict with those provided for in current classification this tariff governs.

COMMODITIES.

Agricultural implements	A	B
Machinery		
Stoves		
Street cars		
Vehicles (See Note 5)		
Blockage, dunnage or temporary racks, used in connection with shipments requiring such. Allow ACTUAL WEIGHT of lumber used, but not more than.	Box or stock cars, 1,000	As per Official Classification.
	Flat or gond. cars. 1,500 (See Notes.)	

Shippers will be required to insert on shipping bill the actual weight of the lumber used, and forwarding agents must see that same is inserted on the way-bill for guidance of weighmen and agents at destination. In the event of shipper refusing or neglecting to declare weight of the lumber used, no allowance will be made.

Acid, in carboys, from Eastern Canada to points west of Fort William, allow for lumber used in racks	Box cars	1,000
	Single deck stock cars		

Ashes	Dec. 1 to April 30	500	500
	May 1 to Nov 30	1,000	1,000

Bark	Dec. 1 to April 30	Box or stock cars	500	500
		Flat or gond. cars, with temp. racks	2,500	2,000
		Flat or gond. cars with perm. racks	1,000	1,000
	May 1 to Nov. 30.	Box or stock cars	500	500
		Flat or gond. cars with temp. racks	2,000	2,000
		Flat or gond. cars with perm. racks	500	500

Lumber and other rough forest products, not elsewhere provided for.	Dec. 1 to April 30	Box or stock cars	500	500
		Flat or gond. cars	1,000	1,000
	May 1 to Nov. 30	Box or stock cars	500	500
		Flat cars or gond. cars	500	500

Live stock (See Rule 14)

Perishable freight. (See Note 3.)	In box or stock cars lined with lumber by shipper, 1,500	As per Official Classification.
	In box or stock cars lined with lumber by shipper and containing stove	2,000

Wood Pulp (wet)	1,000	1,000
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A. Between Canadian points.

B. To points in the United States on the Boston and Maine, Maine Central, Central Vermont, and Rutland Railroads.

NOTE 1.—On shipments between points in Canada, or from points in Canada to points in the United States, an allowance of 500 pounds in weight per car will be made for the weight of standards, strips, stakes, supports and temporary racks on

flat or gondola cars, if loaded with carload shipments requiring their use, in addition to such allowances as are already provided in the tariff.

The foregoing additional allowance of 500 pounds weight per car will not apply to shipments of bark, machinery, agricultural implements, street cars and vehicles loaded on flat or gondola cars.

When billing shipments loaded in refrigerator cars, agents must, in every case, examine ice boxes and tanks, and endorse on way-bills the quantity of ice or brine contained therein, so that a suitable allowance for same may be made at weighing station.

NOTE 2.—No allowance will be made on carload traffic which will reduce the weight below the specified carload minimum.

NOTE 3.—This allowance is to cover weight of lining.

NOTE 4.—For allowances on linings in box cars containing potatoes for New England points, see Tariff No. E-3001, I.C.C., No. E-1956, C.R.C., No. E-3327.

NOTE 5.—No allowance will be made on self-propelling vehicles.

The provisions of the tariffs that the carriers proposed to substitute were as follows: C.R.C. No. E-2312, G.T.R.:—

10. On shipments between points in Canada the following allowances will be made from weights ascertained on track scales:—

(a) An allowance of 500 pounds weight per car will be made for standards, strips, stakes, supports and temporary racks, on flat or gondola cars, if loaded with carload shipments requiring their use. (See Note B.)

(b) Allowance for the actual weight of ice and salt used as preservatives for perishable freight will be made when placed in the bunkers or in the body of the car, except that: When ice is used in the body of the car and the weight thereof at destination is in excess of 500 pounds, and is delivered to consignee, freight charges will be assessed on the actual weight of the ice so delivered and at the rating provided for the freight which it accompanies. (See Note B.) When ice and salt, used as preservatives, are placed in the packages with the freight, charges thereon will be assessed on basis of actual weight at point of origin and at the rating provided for the freight which it accompanies.

(c) Allowance will be made for the weight of lumber required to line box cars loaded with perishable freight, in carloads, provided consignor makes declaration on bill of lading at shipping point as to the number of feet so used, such allowance to be computed at $2\frac{1}{2}$ pounds per foot, board measure, but not to exceed a weight based on 800 feet board measure, per car. Agent at shipping point will make notation on way-bill showing the number of feet so used. An additional allowance of 500 pounds per car will be made for stove and fuel. (See Note B.) No allowance will be made when refrigerator cars are used.

(d) An allowance of 1,000 pounds weight per car will be made for temporary racks on flat or gondola cars loaded with shipments of bark. (See Note B.)

(e) No allowance in weight will be made for permanent racks on flat cars when the weight of such racks is already included in the marked or stencilled tare of the car.

(f) No allowance in weight will be made for grain doors or for boards in doorways of cars loaded with bulk freight.

(g) Weighmen are authorized to make such allowance as they estimate covers the weight of accumulated ice, snow or refuse, which may be in or upon the car at time of weighing; the amount of allowance and reason therefor to be shown on way-bill and station records, also on weekly weighing report, Form 10. (See Note B.)

NOTE B.—No allowance will be made on carload traffic which will reduce the weight below the specified carload minimum.

It will be seen by a comparison of the foregoing that the proposals of the carriers was to do away with allowances for blocking, dunnage, and temporary racks used in connection with the bulk of the freight shipments in cars covered by these tariffs.

Dealing first with the question of dunnage:

"Free transportation of dunnage in closed cars is obviously based on two principles: (1) That the dunnage constitutes a part of the carrier's equipment and as such is not subject to a transportation charge, of (2) that the charges for the transportation of dunnage cars are included in the charges for the transportation of the commodity in connection with which it is used." 52 I.C.C. *Aetna Explosives Company v. Pennsylvania Railroad Company et al.*

The whole controversy revolves around the principles set out in the above quotation, the shippers contention being that dunnage is not only for the protection of the goods, but that it is a protection against damage in transit; that decks have to be put in, in order to enable the shippers to load to the minima established by the tariffs of the railways; that the railways are benefited in that dunnage has the effect of reducing damage claims to a minimum, and enables loading to capacity, so that the companies receive greater earnings per car. They argue that the shippers furnished the material and labour as their share, and the carriers should furnish the transportation.

The carriers answered "that if these goods could be completely boxed as in package freight, then shippers would pay, in addition to the cost of labour and material for casing or boxing, the freight on the weight of the material used at the same rate as on the goods." They contended that standard box, stock, ventilator, and refrigerator cars, in good repair, will accommodate all the ordinary and usual needs of shippers, and that if more than this is demanded because of the form, nature or peculiar characteristics of the goods tendered for conveyance, some obligation must attach to the shipper in connection with the additional demand.

I do not think, however, that this answer altogether meets the situation, nor covers the conditions involved.

Most of these carload goods are wholly or partially crated or boxed by or at the expense of the shipper. Stoves were instanced as being completely crated, and that this crating was sufficient to enable them to be safely hauled and handled to and from the cars. In reply to a question by the Hon. Mr. Mabey, vol. 129, p. 4861, it was stated that these stoves were reshipped l.c.l., without any additional packing or crating, to the various stove dealers, the dunnage having been used to enable them to be loaded to the required minimum and to protect them from damage in transit in carload lots.

This condition would apply more or less to all classes or merchandise in question shipped in carload lots and requiring dunnage.

The shippers argued further that these things are necessary for the purpose of moving this particular form of traffic; that the railways had recognized this necessity and had made these allowances, and that as a result of the practice, continued for many years, traffic had grown up under it; that it was mutually beneficial to the shippers and railways, and that it should not now be withdrawn.

Mr. Beatty stated at p. 2041, vol. 173, of the evidence that "it has been admitted by all parties all the way through this inquiry, that no one of them wanted to collect any more or less than was absolutely proper in the circumstances." This statement was not disputed, and may be accepted as the attitude of both the shippers and the carriers.

The question now resolves itself into what is a fair allowance to be made. At present there is an allowance of 1,000 pounds per car. The railways wanted this reduced to 500 pounds, and the shippers were willing to accept 800 pounds, as the maximum. Mr. Walsh, for the Canadian Manufacturers' Association, contended that 800 pounds was a fair average. Mr. Beatty disputed this. No conclusive evidence is on file as to this.

Now, while in theory it would appear that if the weight of the dunnage is to be certified to by the shipper, and the railway company is to have an opportunity of checking this weight, and the shipper is only to be allowed for the actual weight used, it would not make much difference what maximum allowance might be stipulated.

In practice, however, it has been found that owing to the difficulty in arriving at and checking the weight of dunnage used, the maximum fixed is usually adopted as the weight allowance. That this is not so in all cases was made clear by the evidence submitted, in which it was shown that in the case of shippers possessing facilities for proper weighing of cars only the actual weight used was charged for, and that in some cases where, owing to wrong tare on cars, the weight was in favour of the shippers as against the railway, these weights were corrected to the actual amounts; but that, generally speaking, owing to the great number of places where these carload shipments originate, and where there are no facilities for weighing, the amount fixed was adopted. The railways claimed, therefore, that they were justified in asking that a maximum be fixed and that it should not exceed 500 pounds.

Since these hearings and the conferences between the carriers and the representatives of the shippers, at which the above compromise was offered, namely 800 pounds, by the representatives of the shippers, and 500 pounds, by the carriers, the carriers have somewhat receded from their position, and are again asking that no allowance be made, and that the Canadian carriers be put in the same position as the American carriers.

Mr. F. J. Watson, General Freight Agent of the Grand Trunk Railway, acting on behalf of the Canadian carriers, states that practically all the U. S. lines are working under the rules of the American Railway Association as contained in its Circular No. 1433, dated May 29, 1914, and Rule No. 19B of the Official Classification.

Circular No. 1433 contains rules governing the weighing and re-weighing of carload freight. Rule 8 of said Circular speaks of "Tolerance," but the definition of "Tolerance" attached to this rule is as follows:—

"The difference in weights due to variations in scales or weighing which may be permitted without correction for the billed weight," so that this definition does not affect directly the question under discussion.

Under the Official Classification's Rule 19-B, 500 pounds is allowed for racks, stakes, standards, strips, braces or supports, on lumber or forest products loaded on flat or gondola cars, with the provision that in no case is less than the established minimum carload rate to be charged, and that any excess over 500 pounds is to be charged at the rate applicable to the lading of the car. An allowance of the actual weight, but not more than 500 pounds, is also made on freight other than lumber and forest products requiring the use of dunnage for their safe transportation on the same class of cars, and under similar conditions.

Rule 19-A of the Official Classification makes it quite clear that no allowance is to be made on other than flat or gondola cars.

Now after careful consideration of all the arguments as set forth at the various hearings, and on file with the Board in connection with this matter; and in view of the long standing practice voluntarily put into effect by the carriers, and the selection of certain commodities upon which, no doubt, because of their peculiar characteristics the carriers felt it was in the interest of traffic to make these allowances; and because these have undoubtedly proved a factor in the wider distribution and more general use of those commodities at a lesser cost to the public, I am of the opinion that some allowance should continue to be made.

If the actual weight were always obtainable I think it should be allowed, but for reasons already pointed out it has been found that this is not always possible.

Under all the circumstances I think the allowance for dunnage should be for the actual weight thereof, subject, however, to a maximum allowance of 650 pounds per car, provided that in no case should less than the established minimum carload rate be charged; this maximum to apply to agricultural implements, machinery, stoves, street

cars, and vehicles, as set out in Rule 24 of Supplement 7 of the Canadian Pacific's Tariff previously referred to. I see no reason why the same rule should not also apply generally to acid in carboys; also to such other articles as may be shown from time to time to require dunnage protection.

Secondly: allowance to cover variation in tare of cars caused by absorption of moisture, accumulation of ice, snow, etc. The railway companies contended that there was no longer any necessity for these allowances; that the weighing of freight and taring of cars had become more careful and scientific; that great care was exercised in testing and examining the various track scales, and that everything in their power was done to keep these scales in condition and obtain accurate results.

Evidence was also given by the carriers regarding the various practices prevailing with reference to stencilling the tare on cars, with the view of showing that this was accurately done. On the other hand, statements were filed by the shippers giving actual weights of a large number of cars, and showing a great variation from the tares marked thereon, in some cases the tare being considerably less, and in others considerably more.

To quote from the late Chief Commissioner Mabee's judgment:

"It seems to have been thought fair by the carriers, in arranging their tariffs originally, to make reasonable allowances from track scale weights to rectify any variation in the tare of cars, or increased weight thereof, by reason of the absorption of moisture and the accumulation of snow, ice and the like. These allowances have been in existence for many years, and the business of the shippers has been adjusted in accordance therewith, and any change in these conditions naturally meets with objection. The point in the meantime, however, for consideration is whether it is fair that the carrier should modify these regulations in whole or in part, and whether the working thereof in the past has operated reasonably, or whether under existing conditions undue burdens are placed upon the carriers by reason of these provisions."

I have already pointed out the position of the American Railroads as shown in Circular No. 1433 and Rule 19-B of the Official Classification.

It may be as well, therefore, to discuss the allowances shown in the present Canadian tariffs.

Ashes: There seems to be a difference of opinion as to the reason for this allowance. Mr. Walsh, vol. 173, p. 2017, seemed to think that it was on account of evaporation; that is, that the ashes accumulated a greater degree of moisture in summer prior to loading than in winter, and hence the difference in the allowance. If this were so, in my view no allowance should be made.

In my opinion, shrinkage in weight due to the inherent nature of the goods should not be charged against the carrier: first, because if the car is loaded to capacity at starting, the carriers haul the full weight a certain distance, and any reduction at the end would be equivalent to giving a certain amount of free tonnage. It cannot be said that the reduction represents the average weight hauled, for this will differ with the condition at time of loading, distance hauled, temperature and general weather conditions; second, and I think more important, the carrier is deprived of the full earning capacity of the car. This principle is recognized in Section F of Rule 8 of Circular No. 1433 of the American Railway Association. I would apply the same remarks to Wood Pulp (wet).

On the other hand, I see no reason why any allowance made to cover variation of the tare of cars caused by absorption of moisture, accumulation of ice, etc., should not apply. This will be dealt with farther on.

Bark: The present allowance runs from 500 to 2,500 pounds, depending on the season of the year and the class of car used. These allowances, in the case of open cars, include the racks, with which I deal later. The suspended tariffs made no allowance for car variations, and left the deduction for snow, etc., to the weighman's judgment.

Lumber and other rough forest products: From 500 to 1,000 pounds. In the suspended tariffs the situation (racking omitted) was the same as in the case of bark.

Rule 8, section E of A.R.A. circular 1433 already referred to is as follows:—

“The tolerance shall be one per cent (1 per cent) of the lading, with a minimum of 500 pounds, *on all carload freight*, including coal and coke, except that when ashes, cinders, clay, dolomite, ganister, gravel, mill-scale, ore, sand, slag, all stone (not cut), and similar bulk freight, brick and soft drain tile are loaded in open cars, the tolerance shall be one per cent (1 per cent) of the lading with a minimum of 1,000 pounds.”

It will be seen that under this rule there is an allowance for tolerance upon all carload freight of one per cent (1 per cent) of the lading, subject to a minimum of 500 pounds; while upon certain heavy low-priced commodities, loaded on open cars, the minimum is fixed at 1,000 pounds.

Under this ashes (and I would here call attention to the fact that the tariff does not specify the kind of ashes, but presume wood ashes loaded in box cars is meant), would receive a minimum allowance of 500 pounds, against the present allowance of 500 to 1,000 pounds, depending on season. (If furnace ashes are assumed, if loaded in open cars the minimum would be 1,000 pounds.)

Bark, in like manner, when loaded in box cars would receive a tolerance minimum of 500 pounds, and the same for open cars. The present allowance is 500 pounds for box cars, and from 1,000 to 2,500 pounds for flat or gondola cars, the latter, however, including the racks, etc.

Lumber and other rough forest products would also receive a minimum allowance of 500 pounds, when loaded in box cars, against the present absolute allowance of 500 pounds; or when loaded on flat or gondola cars an additional 500 pounds, making a total minimum of 1,000 pounds, as against the present maximum of 1,000 pounds.

Wood-pulp (wet) would receive a minimum of 500 pounds, compared with the present allowance of 1,000 pounds.

Therefore, in view of the fact that rule E, above quoted, is general in its application and would do away with all question of discrimination; that it is in general use in the United States, and that it would be in the interest of uniformity of practice, I would adopt it, in lieu of the present allowances, to cover variations in tare of cars caused by absorption of moisture, accumulation of ice, snow, etc.

Thirdly: Perishable freight in box or stock cars lined with lumber by the shipper: Present allowance, 1,500 pounds, with an additional allowance of 500 pounds when containing stove and fuel. I think this clearly comes under the first of the two principles cited upon which dunnage allowance is herein based, viz., that dunnage constitutes a part of the carrier's equipment and, as such, is not subject to transportation charge.

Undoubtedly, under the facility clauses of the Railway Act, it is a duty of the carriers to furnish proper cars for the safe and adequate handling and carrying of these commodities. I do not think this is disputed by the carriers, as in the tariffs disallowed they make provision for this. I would adopt this Rule which is as follows, as appearing in G.T.R. tariff C.R.C. No. E-2312, rule 10 (c):

“(c) Allowance will be made for the weight of lumber required to line box cars loaded with perishable freight, in carloads, provided consignor makes declaration on bill of lading at shipping point as to the number of feet so used, such allowance to be computed at $2\frac{1}{2}$ pounds per foot, board measure, but not to exceed a weight based on 800 feet, board measure, per car. Agent at shipping point will make notation on way bill showing the number of feet so used. An additional allowance of 500 pounds per car will be made for stove and fuel. No allowance to be made when refrigerator cars are used.”

Fourthly: In regard to the “500 pounds per car allowance made for the weight of standards, strips, stakes, supports and temporary racks on flat or gondola cars if

loaded with shipments requiring their use, in addition to such allowances as are already provided in the tariff" apparently there is no dispute, a similar allowance having been made in the disallowed tariffs. It is also the same as Rule 19-B of the Official Classification.

Bark, owing to its peculiar physical characteristics of form and weight, when loaded on flat or gondola cars, requires special protection for safety in shipping. The usual practice is to provide for this by means of permanent or temporary racks. The carriers recognizing this necessity have provided in their tariffs allowances to cover the weight of these racks. Owing to the fact that tolerance is included in the amounts named, it is a little difficult to decide just what the allowance in the present tariff is.

I have concluded, however, from an analysis of the tariffs that the amount allowed for the weight of permanent racks is 1,000 pounds, and for temporary racks 1,500 pounds, the balance named being for tolerance; the difference in the allowance made between permanent and temporary racks probably being accounted for by the fact that rough temporary racks would weigh more than the permanent racks. In the tariffs disallowed an allowance of 1,000 pounds weight per car was made for temporary racks on flat or gondola cars loaded with shipments of bark. It is evident the carriers recognized that the average weight of these racks is greater than the average weight of standards, strips, stakes, etc., used with the shipment of other forest products.

I am of the opinion that the rule in the disallowed tariffs making an allowance of 1,000 pounds for temporary racks should be adopted, this in addition to the allowance for tolerance.

Where permanent racks are used they should be included in the tare of the car, if not so included the same allowance should be made.

The Chief Commissioner and Commissioners Boyce concurred.

Ottawa, September 9, 1919.

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

From the standpoint of abstract reasoning, there is a strong argument in favour of the position that when a railway supplies a box car it complies with its obligations as to supplying a facility, and that any further equipment required by way of dunnage should be at the expense, in freight charges thereon, of the shipper.

The Board has, however, recognized that where there is an established railway practice to which business has become adjusted it should not be done away with without a strong affirmative position being made out. Such, for example, was the holding in application of the *Canadian Freight Association re Classification Ratings on Tobacco, Board's File 16453*. It was there pointed out that a change in classification which would disrupt conditions to which the wholesale grocery business had become adjusted should not be sanctioned without a strong affirmative case being made out; and the application in question failed for this reason.

It appears in the present instance that business conditions have become adjusted to the practice of dunnage allowances. It appears that in the earlier portion of the hearing it was the amount of the allowances, not the practice, which was contested. While, later, the practice was contested, it does not appear that a sufficiently strong affirmative showing was made.

It appears in the case, as developed, that the packing and crating of the C. L. Shipments inbound is of value in permitting the L. C. L. shipments to move outbound in the original packing or crating. When these shipments so move, the railway has the advantage of the freight charge on the weight of the packing or crating at the same rate as applies on the commodity so contained.

While if the matter of dunnage allowances were being taken up *de novo* I would oppose the practice, at the same time I feel that I must take trade conditions as I find them and am, therefore, constrained to accept the practice, the only question being what is a reasonable allowance.

I agree in the general disposition recommended by Mr. Commissioner Goodeve as to the various matters covered in his Reasons for Judgment.

November 4, 1919.

Complaint of Messrs. Black & Son, of Belleville, Ontario, through Mr. E. Gus Porter, M.P., relative to express collection and delivery in Belleville, Ontario.

File 4214.168.

REPORT OF COMMISSIONER BOYCE TO THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA.

Under the powers conferred by section 12 of the Railway Act, I was delegated by the Chief Commissioner, on October 12 last, to hold an investigation, at Belleville, into the matter of this complaint, take evidence and acquire any necessary information and report to the Board, and in accordance with such instructions I sat at Belleville on the 14th instant and heard the submissions of the parties concerned. Mr. E. Gus Porter, K.C., M.P., appeared for the complainants, Mr. W. C. Chisholm, K.C., and Mr. John Pullen appeared for the Canadian Express Company, and Mr. C. N. Ham appeared for the Express Traffic Association of Canada. The evidence was taken verbatim by an official reporter and is submitted to the Board.

The complainant is engaged as a commission merchant, at Belleville, and has been so engaged for many years. He buys the "catch" of the fishermen, ices and packs it, and ships to the markets of Montreal, Toronto, St. Thomas, London, Buffalo, and New York. The fish is landed at the dock at Belleville by the fishermen by the boats of the complainant to which delivery is made by the fishermen at the fishing stations—that is, complainant buys the fish at the grounds, collects it by his boats, lands it at the Belleville dock, ices and packs it, and ships it by express in boxes to the markets. From the nature of the business complainant says that it is necessary to start out for this fish in the morning, and that he cannot get it back to Belleville before two o'clock in the afternoon, that it takes until three o'clock to unload, and that it is after five o'clock in the afternoon before it is iced, packed and ready to ship. The boxes travel by night train to Toronto. The object of this arrangement is to secure the fish from the nets lifted that morning, and it is alleged that the collection arrangements by the complainant are the most rapid and convenient for the purpose of securing fresh fish for marketing. The quantity shipped daily is uncertain, according to seasons and conditions, it is said to vary from four or five boxes a day to 100 to 400 or 500 boxes in the busy season. Last season there were as many as three cars in one night. The heavy run is on in the fall and spring (p. 8885).

The complainant says that he receives, as his profit on the handling of this fish—boat-hire, steamboat cost, maintenance of ice and packing-houses and labour included, a commission of one cent a pound commission on the fish shipped from Belleville.

The complaint is that, whereas until recently the express company, under an arrangement with an independent carter paid by them, collected the fish boxes, when ready, from the dock at Belleville, day or night, and carted them, free of charge, to their depot and loaded them on the trains for market points, that arrangement has been discontinued as to collections after 5 p.m. daily, after which hour the wagon service must be performed at the expense of the shipper (complainant), or the fish must remain where it is until the next morning's collection and suffer the deterioration in quality and value of twenty-four hours' delay. This change the express company seeks to

justify by its circular of 19th May last, filed, and which purports to limit hours of delivery and collection to the period of each day between 8 a.m. and 5 p.m., thus adopting the eight-hour day, as the circular says, "in line with public sentiment and to improve working conditions of employees." As none of the shipments of fish of complainant are ready for shipment before 5 p.m., it means that an arrangement for free cartage collection of his shipments—existing for many years—and upon the basis of which complainant alleges his business has been largely built up, has been discontinued, and the complainant is obliged to absorb the charges of loading into wagons and carting from dock to station, involving, as he points out, a burden that the business will not stand. It is alleged, and not disputed, that there is no case of disagreement between the express company and its carters usually employed for delivery and collection at Belleville, which is a city where there is free delivery and collection service, nor would the continuance of the arrangement with complainant disturb the relations between the company and its carters. The cartage in question was not performed by the express company's wagons, or by their carters, but by an arrangement made between the company and independent carters, and which arrangement these carters are quite willing to continue, but are prevented by the express company from continuing, as the agents of the company.

The cost of cartage was stated to be 10 cents per box, or one-tenth of 1 cent per pound. The complainant stated, p. 8891, that if he had to do the carting after 5 o'clock the increased expense would be about 20 cents a box, or one-fifth of a cent a pound—and (p. 8893), that this would mean that the fisherman would have to take less for his fish, or "the others" (I presume the consignees) would have to pay it. That is, that the product would be called upon to absorb an additional cost at the market of not more than one-fifth of a cent per pound, in consequence of the discontinuance of the cartage arrangement with the express company. That is the gist and substance of this complaint, viz., that the traffic will not stand the additional cost put upon it, which is said to be unjust.

The Express Companies allege that the change, limiting the working hours by adopting the shorter day, was made last May in common with all other express companies as a result of a strike by the employees of the Canadian Express Company (p. 8886) and the notice of 19th May last was sent out accordingly. That the principle has everywhere been adhered to as regards collection and delivery hours, and that beyond those hours, in delivery and collection area, if shipment cannot be held over, shipper must make his own cartage arrangements. That to give the complainant this service and deny it to others would be discrimination which the Express Companies could not justify, and that the action of adopting an eight hour schedule for a pick-up service has removed any discrimination that may have previously existed, and that all shippers of perishable commodities are on the same basis now (p. 8895). It is further pointed out that as fish moves under commodity rates, the situation is governed by the conditions of the judgment upon the application of the Express Companies to increase those rates (see p. 165, judgment of the then Chief Commissioner; Judgments of the Board, 1919). The Neilson Complaint (Vol. 298, p. 2362) was referred to, also to Express Rates Case—Regina Sitings—Vol. 304, p. 4785, where the late Chief Commissioner is reported as saying:—

"The express companies are not called upon to put on special wagons for any particular man. If you bread people, or the ice cream people, or the people in some other business want to have all this stuff put on a particular train which does not jibe with the regular Express collection and delivery, you must take it down yourselves. If it jibes with the ordinary wagon service you have a right to have your stuff taken by the Express Companies."

The Express Companies have already acted upon the judgment of the late Chief Commissioner, permitting them to discontinue collection service as to traffic shipped under commodity rates, and have filed an amendment to their commodity tariff, effective September 1, 1919, providing that no collection service will be performed at

shipping points on commodities carried at special commodity rates. The existence of this amended tariff was not referred to at the hearing, but was afterwards, by leave, referred to in a letter from Mr. Ham, dated 15th October last, a copy of which has been sent to Counsel for the complainant and his comments thereupon invited, but without reply.

Whatever may have been the hardship imposed upon the complainant by the limitation, in accordance with the Express Companies' circular of May 19, of the wagon service to the hours between 8 a.m. and 5 p.m. it is impossible to avoid the conclusion that to continue that service to the complainant and refuse it to all other shippers would be a discrimination which could not be justified, and the fact that the wagon service performed was not by wagons of the express company, but by wagons and labour engaged by them for the purpose, brings no difference in the effect as to the discrimination alleged. The arrangement theretofore, had been in force for years, during which time the market price of fish had been increased in common with all other food commodities, and my own impression is that it ought not to be a matter of great difficulty for the additional cost (a maximum of one-fifth of a cent per pound) to be absorbed somewhere before the fish reaches the market.

The amendment to the commodity tariff, by the Express Companies, effective 1st September last, discontinuing all collection service, on special commodities, including fish, is justified as before mentioned and precludes any interference now by the Board.

I, therefore, beg to report, that, for the reasons given, the complaint should be dismissed.

A. C. BOYCE,
Commissioner.

OTTAWA, October 27, 1919.

The Chief Commissioner, the Assistant Chief Commissioner, the Deputy Chief Commissioner, and Commissioners Goodeve and Rutherford, concurred.

OTTAWA, November 1, 1919.

ORDER No. 29001.

In the matter of the complaint of Black & Son, of Belleville, Ontario, hereinafter called the "complainants," against the limitation of the hours of collection of their fresh fish shipments by express companies to the period of each day between 8 a.m. and 5 p.m.

File No. 4214.168.

WEDNESDAY, the 12th day of November, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

The evidence in this complaint having heard in Belleville, October 14, 1919, by a commissioner appointed under section 12 of the Railway Act, 1919, in the presence of counsel for the complainants and the Canadian Express Company and a representative of the Express Traffic Association of Canada, the said commissioner having reported to the Board, and the said report having been adopted,—

It is ordered: That the complaint be, and it is hereby, dismissed.

F. B. CARVELL,
Chief Commissioner.

Complaint of the residents of Wilberforce, Ont. and outlying districts, and others, that the Canadian National Railways (Irondale, Bancroft & Ottawa Branch) intend to run only three trains weekly in place of a daily service as heretofore after October 5, 1919.

File 23938.

JUDGMENT.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

The Irondale, Bancroft & Ottawa Railway, a subdivision of the Canadian National Railways, was formerly a separate railway. The last separate report for it as a distinct railway is contained in the Statistics of the Department of Railways and Canals for the year ending June 30, 1914. Subsequent to that date the line was acquired by the Canadian Northern Railway.

The line extends from the junction with the Grand Trunk Railway near Kinmount Station to the junction with the Central Ontario Railway, a distance of 51.9 miles.

The report for 1914 showed, in round figures, total earnings of \$32,000. Of this, the passenger earnings represent 29 per cent. The road was operated at a deficit, the operating ratio being 112 per cent. The gross earnings per mile were \$633; the average passenger journey was 16 miles. The tonnage carried averaged 597 per mile.

An analysis of the tonnage movement upon the line, as returned for the year ending June 30, 1914, is of interest as setting out the traffic conditions. Since the line has been incorporated into the Canadian Northern and subsequently come under the Canadian National Railways, no separate report has been made to the Government for this section of the line, and the same detail is of course not available; but an analysis of the traffic as of June 30, 1914, may be taken as in a general way indicative of existing conditions. The analysis follows:—

Products of agriculture—		
Grain.. . . .	}	1,804 tons.
Flour.. . . .		
Other mill products.. . . .		
Hay, etc.. . . .		
Products of animals.. . . .		522 "
Products of mines.. . . .		2,630 "
Products of forest.. . . .		23,685 "
Manufactures.. . . .		557 "
Merchandise.. . . .		2,072 "
Other commodities.. . . .		3,051 "

It will be noted that lumber and forest products represent 76 per cent of the total tonnage.

Of the tonnage carried, 20 per cent was received from other roads in Canada. Practically all of the tonnage originating on the road fell, under the heading of forest products.

The matter of service on this line has been before the Board from time to time. The time table history from April 5, 1915, to October 5, 1919, is as follows:—

- Time-table 38, April 5, 1915, mixed service daily, except Sunday, in each direction.
- Time-table 39, June 12, 1915, mixed service daily, except Sunday, in each direction; same as No. 38, except westbound train instead of leaving York River Junction at 10.05 a.m., left at 9.05 on Tuesday, Thursday and Saturday, and 11.30 a.m., Monday, Wednesday and Friday.
- Time-table 3, Dec. 12, 1915, brought into existence the same service (the same time) as No. 38.
- Time-table 8, Jan. 15, 1917, reduced to a tri-weekly service in each direction, Monday, Wednesday and Friday (mixed).
- Time-table 5, April 21, 1918, established a daily, except Sunday, mixed train in each direction.
- Time-table 2, Oct. 5, 1919, reduced service to a tri-weekly in each direction, Monday, Wednesday and Friday (mixed).

Complaint having been made of the reduction to a tri-weekly service which became effective October 5, 1919, this matter was set down for hearing.

The complaint as launched sets out that this is wholly undesirable from the standpoint of passenger service; that the majority of the residents along the line are dependent upon the railway for carriage of food and medical assistance, and that the tri-weekly service will seriously interfere with this being carried on. Various petitions have been received. It is pointed out in one petition from Wilberforce, Ontario, that during the winter months lumbering is the main industry. It is alleged that the railway cannot successfully operate during the winter season on a tri-weekly service. Reference is made to the conditions during the exceedingly severe weather of January, February and March of 1918, when it is stated that the tracks were blocked with snow and ice, and the railway spent far more in an endeavour to keep the road open for tri-weekly service than would have been necessitated had a daily service been maintained.

Reference was made to the unsatisfactory service both in respect of passenger and mail service thus afforded; and it was alleged that the company cannot gain anything by making the change suggested.

The matter was developed so far as the petitioners were concerned by written statements; the railway spoke to the matter in Ottawa on October 7. Subsequent to the hearing, additional evidence affecting mail service and directed in the first instance to the Postmaster General was placed before the Board. Statistics were furnished by the railway regarding passenger business, and it was alleged that this showed that conditions from the standpoint of operating costs were such that a reduction in service was justifiable.

The passenger service is a mixed one, a combination car being hauled behind the freight train; consequently it was held by the Board that to understand the situation detail statements regarding general earnings and expenses covering not only passenger but freight as well should be submitted. These are now before the Board for consideration.

For the period from January 1 to June 30, 1919, there have been carried on the average, in both directions, 53 passengers per day; that is to say, an average of approximately 26 each way. The earnings per passenger train mile have varied from 22 cents in January to 43 cents in March. If a rough average is taken of the train-mile earnings for this period in question the result shows 32 cents.

As already pointed out, the service being a mixed freight and passenger one, this is not conclusive as to the earnings of the train.

The total train-mile earnings during the period January to June, 1919, averaged 87 cents.

In dealing with the matter of service on the railway, the Board has, on the facts, had to recognize that the freight traffic is a large factor, and that the volume of freight traffic enables a certain amount of passenger service to be carried as incidental to it, it being further recognized that the conditions do not justify a passenger service separate and distinct from the freight. In other words, that the only way the traffic could be handled was by a mixed train service.

In May, 1916, the railway desired to reduce the service to a tri-weekly service, mainly on the ground of the light traffic offering. The Board's investigation showed that there then was a large amount of traffic offering, and on the amount of freight available the desire of the railway to reduce the service was refused.

On the figures presented by the railway from January to June, 1919, the passenger traffic has been well balanced, being 4,089 in one direction and 4,111 in the other. The average fare per passenger paid was 67 cents. Assuming that all the traffic moved on a return fare rate, this would give an average one-way trip of about 20 miles.

The total out-of-pocket costs for the operation of the service for the period January to June, 1919, showed, as compared with the passenger and freight earnings, a deficit of \$910. The detail is set out below:

Wages of enginemen and firemen.. . . .		\$ 3,581 60
Wages of conductors and trainmen.. . . .		2,994 17
Fuel for locomotives.. . . .		5,047 47
Oil waste and supplies for locomotives.. . . .		132 00
Engine house expenses and repairs to locomotives.. . . .		2,760 45
Repairs to combination cars.. . . .		577 50
Repairs to box cars.. . . .		464 08
		<hr/>
Passenger earnings.. . . .	\$5,361 90	\$15,557 27
Freight earnings.. . . .	9,284 48	
		<hr/>
		\$14,646 38
		<hr/>
		\$ 910 89

This is exclusive of any provision for maintenance or upkeep of the track. The cost of maintenance would, as represented in the statement given below, represent over \$20,000 for this period.

Roadway maintenance.. . . .	\$ 1,631 61
Bridges, trestles and culverts.. . . .	2,874 20
Ties, renewals.. . . .	3,013 00
Track material.. . . .	641 73
Track laying and surfacing.. . . .	6,998 19
Right of way fences.. . . .	433 47
Snow fences.. . . .	232 54
Crossing and signs.. . . .	90 32
Station and office buildings.. . . .	403 40
Roadway buildings—Repairs.. . . .	29 27
Roadway machines.. . . .	2 28
Small track tools and supplies.. . . .	258 72
Removal of snow and ice.. . . .	1,530 29
Station employees—Wages.. . . .	1,860 00
Station supplies.. . . .	12 32
Train supplies.. . . .	14 75
Clearing wrecks.. . . .	244 29
	<hr/>
	\$20,270 38

At the hearing, the railway directed special attention to increased labour costs to which it had been subjected.

It was stated that the cost for engineer, fireman, conductor and brakemen amounted to \$1,200 per month, and that if a reduction in train service was allowed a saving of approximately \$500 per month in this respect could be obtained. It is true that the cost of the crew would run on, but their services could be utilized for three days a week on other parts of the system.

The increase in monthly wages for the engineer, fireman, conductor and brakemen may be gathered from the following summary statement regarding a period of years:—

1912.. . . .	\$ 223 29
1913.. . . .	222 93
1914.. . . .	250 95
1916.. . . .	642 36
1919.. . . .	1,200 00

As indicative of the wage increases in other respects, reference may be made to the monthly bill for the section-gang. In 1916, there were, as at present, 7 sections. The wages are now computed on an 8-hour day, the foreman being paid at the rate of 52 cents an hour and the sectionmen at the rate of 40 cents an hour. In a comparative way, the following detail is available:—

Foreman.

1916.. . . .	\$1 80 per day.
1919, 8 hours at 52 cents.. . . .	4 16 "

Sectionmen.

1916.. . . .	\$1 50 per day.
1919, 8 hours at 40 cents.. . . .	3 20 "

The matter of section pay has been checked up with the railway and the Board is advised by the railway that a standard section-gang for branch lines consists of one foreman and three men. In returns given in April 1916 for the same line of railway, the wages for foreman and two men per section amounted to \$120 per month, or a total of \$840 for seven sections. On the basis of a standard section-gang with foreman and three men paid on an 8-hour basis, as above indicated, the cost per section would, in round numbers, be \$230, or a total of \$1,610 for the seven sections as against the \$840 above referred to.

In the freight and passenger returns which are given in summary form above, the company puts the whole of the passenger earnings in the branch line traffic, there being comparatively little through traffic. No attempt is made to apportion the earnings from this source as between the branch line and the other portions of the Canadian National System on to which the through traffic may move.

In the case of freight revenue, the line is given full credit for the traffic local to the line. The through traffic is proportioned to the mileage. On the figures which were checked out in 1916, the proportion of through freight earnings approximated 51 per cent of the earnings of the branch. It is manifest that the earnings of the freight traffic originating on the branch and moving on to other portions of the system cannot justifiably be allocated in their entirety to the branch, for if this were done it would mean that in respect of the service performed on other portions of the system over which the traffic was hauled there would be no allocation whatever for earnings, while at the same time they would have to bear the expense of operation.

The analysis of the freight business for the period January to June, 1919, bears out, in a general way, what was contained in the analysis of the traffic for the year 1914 in respect of the nature of the movement. On the basis of total freight received on traffic inbound and outbound (this being exclusive of any allocation as between the branch and the system) shows about 36 per cent of the freight revenue as inbound traffic.

The returns above given point out that the daily service as at present rendered is not meeting the out-of-pocket costs, and that, further, it is not meeting the overhead costs in regard to maintenance. The deficits both in respect of out-of-pocket cost and maintenance must, therefore, be met out of the system earnings.

In the case of the Richmond-Coaticook train service, file 27563.19, the Board dealt with a situation where (a) the need for the retention of the existing service was established; (b) where the earnings were a little in excess of the out-of-pocket costs, exclusive of any return to overhead costs. This service was concerned with an exclusively passenger train service. It was at the same time developed that the average earnings of the passenger train service of the Grand Trunk Railway concerned were very considerably greater.

Without acceding to the position that if a railway cannot meet the out-of-pocket costs of the train movement it is therefore justified in reducing the service to zero, it is at the same time abundantly apparent that one factor to be given weight is the out-of-pocket costs of operation; not the only factor, because it seems to me that a railway, if it is to be a railway at all, must, no matter how adverse the conditions are, give a minimum service, the sufficiency of which is a matter of judgment in each case.

The petitioners have pressed their case very strongly and earnestly. At the same time, the facts as developed do not justify the Board in directing that the daily service hitherto in existence should be re-established. The branch line service is not meeting its costs. This is a fact which the Board must give weight to. It may be urged that a branch line service is of value in creating traffic for the Canadian National System of which it is a part. So far as the passenger business is concerned, this is a negligible item because, as indicated in the computations set out, the branch has been given credit for all the passenger business originating on it whether local or through. As to the through freight traffic which is largely lumber, this gives the system approximately 50 per cent of the revenue, as distinct from that apportioned to the branch.

It is a reasonable proposition to urge that the branch line and its service should not be taken as standing wholly by itself, but should be considered in connection with the system of which it is a part. The most that could be contended in this connection is that considering the freight traffic of the branch line the daily service should be continued, and that as incidental thereto the mixed daily passenger service should be continued; all this proceeding on the assumption that the system of which the branch is a part is able out of its excess of earnings over expenses to absorb the deficit.

But what is the situation? The branch line service is, on the figures given, operating at a deficit. In connection with the increases in rates under P. C. Order No. 1863, reports are on file dealing with the situation of the Canadian Northern Railway. For the year September, 1918, to August, 1919, the Canadian Northern Railway had an operating ratio of 107.29, with a total deficit of \$3,623,700. If the period from January, 1919, to August of the same year is taken, the operating ratio is 116.96, or a deficit of \$3,268,105. From January to June, 1919, the operating ratio was 120.65, with a deficit of \$4,400,455.

Where the branch line service is not paying and the parent system is characterized by deficits such as have been pointed out, the only result of directing the daily service to be continued would be to add to the burden of deficit which the Canadian people have at present to take care of in regard to the Canadian Northern Railway System.

Under these circumstances, the tri-weekly service, unsatisfactory as it in many ways may be, will have, it is regretted, to be allowed.

The railway is to keep monthly statements of receipts and expenditures and is to file these with the Board not later than April 15, 1920, so that the question of whether there is any change of conditions which will justify the reinstallation of the daily service may be then gone into.

November 10, 1919.

The Chief Commissioner and the Deputy Chief Commissioner concurred.

ORDER No. 29025.

In the matter of the complaint of residents of Wilberforce, Ontario, and outlying districts, that the Canadian National Railway Company (Irondale, Bancroft and Ottawa Branch) intend to run only three trains weekly, instead of a daily service as heretofore, after October 5th, 1919:

File No. 23938.

SATURDAY, the 15th day of November, A.D., 1919.

HON. F. B. CARVELL, K.C., Chief Commissioner..

S. J. McLEAN, Asst. Chief Commissioner.

HON. W. B. NANTEL, Deputy Chief Commissioner.

A. C. BOYCE, K.C., Commissioner.

Upon hearing the complaint at the sittings of the Board held in Ottawa, October 7th, 1919, in the presence of counsel for the Canadian National Railway Company, no one appearing for the complainants,—and what was alleged: and upon reading the further submissions filed,—

It is ordered: That the complaint be, and it is hereby, dismissed.

A. C. BOYCE,
Commissioner.

Re question of agreement between the Grand Trunk Railway Company and the Berlin Machine Works, Limited, of Hamilton, Ontario, in respect of operation over the sidings, or spurs, located on the lands of the Berlin Machine Works, Limited, and owned by the said applicants.

Case 2818.

JUDGMENT.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Both the Grand Trunk and the Toronto, Hamilton and Buffalo Railway Companies have been operating the sidings in question, and it is stated that the Berlin Machine Works, Limited, have declined to enter into an agreement.

An application was made by the railways in question to discontinue operating over the sidings in question. Just how the operation began is not clear. The Berlin Machine Works, Limited, states that the operation upon the sidings with the lands of the Berlin Machine Works, Limited, has been conducted under the terms of Order No. 4844 of April 24, 1908; and it is stated, further, that the siding within the works of the Berlin Machine Works, Limited, has been constructed in pursuance of the said order.

In the original hearing on April 24, 1908, it was set out by Mr. Cowan for the Grand Trunk that at the time the application was launched it was the intention of the Grand Trunk to build a siding, as shown on plan filed, into the Berlin Machine Works, Limited, but that since the application was launched the Berlin Machine Works, Limited, had decided to construct the tracks and sidings on their own property and to use their own engines and do their own switching. The Grand Trunk, therefore, desired to withdraw that portion of the application which was concerned with the construction of the siding into the Berlin Machine Works, Limited, and asked leave to construct a siding off its own line over the Toronto, Hamilton and Buffalo to the limits of the land of the Berlin Machine Works, Limited. It was stated that this was satisfactory to the Berlin Machine Works, Limited, and it was also satisfactory to the Toronto, Hamilton and Buffalo; and the Grand Trunk stated that when these tracks were constructed on the property of the Berlin Machine Works, Limited, the Grand Trunk, if the Berlin Machine Works, Limited, so desired, was willing to operate over them.

Following this, Order No. 4844 of April 24, 1908, issued. The Order recited, as has already been set out in the reference to the evidence, that the Grand Trunk withdrew the portion of the application respecting the construction of the branch line and sidings on the property of the Berlin Machine Works, Limited. The Order authorized the construction of the Grand Trunk spur up to the dividing line between the lands of the Grand Trunk and the lands of the Berlin Machine Works, Limited. Nothing is contained in the Order as to operation of the sidings of the Berlin Machine Works, Limited.

The matter has been brought before the Board to determine the terms of an agreement.

Section 312, subsection 2, and section 316, subsection 5, of the Railway Act, provide as to the facilities in respect of private sidings or private branch railways. The corresponding provisions of The Railway Act as in existence prior to the legislation of 1919 are section 284, subsection 2, and section 317, subsection 5. The provisions of the new Act repeat in section 312, subsection 2, the identical words of subsection 2 of section 284 of the former Act; while the same identity exists between section 316, subsection 5, of the new Act and section 317, subsection 5, of the former Act.

The subsections in question in sections 284 and 317 as referred to were introduced into The Railway Act by the amending legislation of 1906 (cap. 42, section 36).

An analysis of the subsections as they stand is of value:—

Section 312, subsection 2: Such adequate and suitable accommodation shall include—

reasonable facilities for the junction of private sidings or private branch railways

(a) with any railway belonging to or worked by the company;

(b) and reasonable facilities for

(1) receiving, forwarding, and delivering traffic upon

(2) and from those sidings or private branch railways,

(3) together with the placing of cars and moving them upon and from such private sidings and private branch railways.

Section 316, subsection 5: The reasonable facilities which every railway company is required to afford under this section shall include—

reasonable facilities for the junction of private sidings or private branch railways

(a) with any railway belonging to or worked by any such company

(b) and reasonable facilities for

(1) receiving, forwarding, and delivering traffic upon

(2) and from those sidings or private branch railways.

The difference in content between section 312 and section 316 is in the item which has been numbered as (3) of (b), viz., the provision as to placing and movements of cars.

The requirements of the sections would, in general, be satisfied with the taking over of the traffic at the junction point without any movement on to the private tracks. The specific provision of section 312 as to cars carried the obligation further. But this does not import a general obligation as to a general and unlimited operation over the tracks in question. There is required only such limited operation as may be required to comply with the facilities provisions as set out. No general rule can be laid down as to this. It is a matter to be ruled on in each case.

In authorizing such limited necessary operation on the tracks in question, it is to be presumed that Parliament had in mind that this limited necessary movement should be under the protection of The Railway Act.

The Railway Act apparently implies that the general operation of the trackage in question is to be in the hands of the owners thereof.

But if instead of a movement thus limited there is involved a general operation of the railway over the trackage in question, such operation not being under the branch line section, I am unable to find anything in The Railway Act which applies the obligations, protections and limitations of that Act to this service; and it would appear that the definition of liability, etc., as between the parties would of necessity have to be dealt with by agreement.

In the application herein involved, the matter at issue is the fixing of the terms of an agreement in respect of a matter falling within the subject matter of sections 312 and 316. I do not find any provision in The Railway Act authorizing or empowering the Board to make such an agreement.

The Board's intervention, as I understand it, is simply at the request of the parties, and to deal with the matter as a disinterested third party; and it follows from this that whatever may be found to be right and proper in the present instance is related to present facts alone, or to such other state of facts as may, on similar request for the same action as is taken by the Board in the present instance, be found to be on all-fours therewith. The question whether the Board has any enforcing powers in respect of an agreement entered into in respect of a service such as is herein concerned is not necessarily involved in the present application, and opinion thereon need not be expressed.

In the present instance, draft agreements have been submitted both by the Grand Trunk and the Berlin Machine Works, Limited, and the Board has been asked to deal with the determination of a reasonable agreement.

While in the recital of the drafts, provision is made that the Berlin Machine Works, Limited, is hereinafter called the "Berlin Machine," this is not consistently carried out. For the sake of clearness, I have amended the drafts in this respect to bring them into harmony with the recital.

As to Clause 1, the parties are in agreement. This clause reads as follows:—

"That for the Berlin Machine business only, the Berlin Machine give the Grand Trunk the right, power and authority to enter on the lands and premises of the Berlin Machine with its locomotives, engines and train crews, and to operate upon and over the sidings thereon."

As to Clause 2, the parties are also in agreement. There should be incorporated a provision that Order 12225 should be subject to such amending Order or Orders as may issue:

"That the terms and provisions of Order No. 12225, dated 9th November, 1910, of the Board of Railway Commissioners for Canada, subject to such amending Order or Orders thereto as may issue, making provision for the protection of railway employees especially as to the prohibition of keeping piles of materials, structures, and obstructions a distance of not less than six (6) feet away from the gauge side of the nearest rails of said sidings, shall be held to apply to all such sidings, and shall be complied with on the part of the Berlin Machine."

Clause 3 is not agreed upon. Clause 3, under the draft of the Berlin Machine Works, Limited, reads:

"That the Grand Trunk shall at all times during the continuance of this agreement keep the tracks from its main line tracks to the plant of the Berlin Machine, including that portion of the said tracks on the property of the Berlin Machine, free from snow and ice and keep the said tracks in repair."

Clause 3 of the Grand Trunk draft reads as follows:

"That each of the parties hereto shall assume and be responsible for the maintenance and repairs of the sidings situated on their own lands respectively."

The tracks on the private branch line of the Berlin Machine Works, Limited, are the property of the Berlin Machine Works, Limited, and it does not appear reasonable to put upon the Grand Trunk the obligations herein asked for. The clause suggested by the Grand Trunk may be adopted, subject to an amendment as to a case where work is done by the railway on request. The clause would then read:

"That each of the parties hereto shall assume and be responsible for the maintenance and repairs of sidings situated on their own lands respectively, provided that where the necessary work of maintenance and repairs in respect of the sidings of the Berlin Machine, and also of keeping them free from ice and snow is, at the request of the Berlin Machine, performed by the railway, it shall be at the expense of the Berlin Machine; said expense to be settled for by them on account rendered."

Clause 4 of the Berlin Machine Works, Limited, draft is as follows:

"The said Berlin Machine reserves the right to at any time during the currency of this agreement, change the location of the tracks within the boundaries of their own property."

No such provision is contained in the draft agreement submitted by the Grand Trunk. It is apparent that difficulties in connection with operation might arise

unless there was co-operation between the Berlin Machine Works, Limited, and the railway in respect of changes in location. The draft clause of the Berlin Machine Works, Limited, may be accepted, subject to an amendment providing for the co-operation referred to. The whole clause would then read, with an amendment to the reference to Order No. 12225 similar to that which has been added to Clause 2:—

“The said Berlin Machine reserves the right to at any time during the currency of this agreement change the location of the tracks within the boundaries of their own property, provided this shall be subject to and in compliance with the terms of the Board’s Order No. 12225, above referred to, and such amending Order or Orders thereto as may issue; and provided, further, that one week’s notice of intention to make such change shall be given in writing to the Grand Trunk; and if the change of location involves a change in the method of connection with the tracks of the Grand Trunk property on account of curvature or other operating conditions, then the expense of such changes upon the property of the Grand Trunk shall be borne by the Berlin Machine.”

The question of liability is dealt with in clauses 5 and 7 of the Berlin Machine Works, Limited, draft and in clause 5 of the Grand Trunk draft. The clauses in the Berlin Machine Works, Limited, draft read as follows:—

“5. Should any injury or damage to sidings, buildings, plant or employees of the Berlin Machine be caused by the negligent operation of the engine or cars by the employees of the Grand Trunk within the boundaries of the said Berlin Machine lands, then the said Grand Trunk shall bear all responsibility for same.”

“7. It is also agreed that each of the parties shall assume and be responsible for all acts of negligence of its own servants, agents and workmen, and shall indemnify and save harmless the other parties from any and all claims for loss and injury to person or property arising out of or owing to such acts of negligence.”

Clause 5 of the Grand Trunk agreement provides:—

“It is also agreed that each of the parties shall assume and bear all responsibility for acts of negligence of its own servants and employees, and in case of any accident or injury to the person or property of the employees or servants of the Berlin Machine arising out of neglect to keep out of the way and clear of the trains and movements by the Grand Trunk on such sidings, the Berlin Machine shall save harmless and defend the Grand Trunk from and against all claims made in regard thereto.”

It is contended by the Grand Trunk that clause 5 of the Berlin Machine Works, Limited, agreement is sufficiently covered by clause 7 of the said agreement; and it is further contended that the words contained in clause 5 of the Grand Trunk agreement in respect of accidents or injuries to the employees, etc., of the Berlin Machine Works, Limited, arising out of their negligence to keep out of the way and clear of the trains and movements of the railway should be provided for. It is stated where an industry is getting special service over and above that which is afforded the ordinary trader who has to team his goods from the team tracks, such an industry should take the risks incidental to the railway bringing its engines and cars into the premises.

In further reference to the provisions as set out in clause 5 of the Grand Trunk draft, the following language is used by the railway:—

“Experience has shown that it is necessary to make it plain that owners of industries should instruct their employees and keep them warned as to the dangers of interfering or getting in the way of trains. It is a question where the provisions of the Railway Act as to our giving signals should apply in

cases where we are operating on tracks situated as the present are. It may be said that we will not be liable in case of injuries to employees of the Trader arising out of their own negligence, but claims are made and costs incurred and sometimes damages given by a jury which declines to attribute negligence to the injured person. It must be remembered also that we have not, as in the case of the ordinary railway line, a fenced right of way, and the track is open to be crossed at any point, and if the Trader is responsible for any claims which may be made against the railway it will provide instructions and rules for the employees and will, as far as possible, see that they are carried out."

The necessity for the distinction which the Berlin Machine Works, Limited, makes in its clauses 5 and 7 is not apparent, as the wording of clause 7 appears to be sufficiently wide to cover liability in respect of all acts of negligence. At the same time, the qualifications which the railway desires to put in, as set out in its clause 5, do not appear necessary.

The obligations in respect of liability so far as the Berlin Machine Works, Limited, is concerned should, of course, be limited to the boundaries of the lands of the company. The general situation will be taken care of by a clause reading as follows:—

"It is also agreed that each of the parties shall assume and bear all responsibility for all acts of negligence of its own servants and employees, within the boundaries of the said Berlin Machine lands, and shall indemnify and save harmless the other parties herein from any and all claims for loss and injury to person or property arising out of or owing to such acts of negligence."

Clause 6 of the Berlin Machine Works, Limited, agreement and Clause 4 of the Grand Trunk draft are in agreement, except as to certain limitations contained in the Berlin Machine Works, Limited, agreement in regard to the goods and merchandise being consigned to the Berlin Machine Works, Limited, and also as to the liability arising in respect of property consigned to the Berlin Machine Works, Limited. The Berlin Machine Works, Limited, wants to have it made clear that its liability under the clause arises only when the goods in question are on the property of the Berlin Machine Works, Limited. The points of difference may be made more clear. The Grand Trunk agreement provides that the conditions endorsed on the form of Bill of Lading apply "to any goods or merchandise contained in cars while on the said sidings." The Berlin Machine Works, Limited, desires to have this amended by adding after the word "merchandise," "belonging to or consigned to the Berlin Machine Works, Limited." This limitation appears to be reasonable, because if the railway sees fit to take on to the Berlin Machine Works, Limited, private sidings cars containing merchandise destined to other consignees, this is a condition for the creation of which the Berlin Machine Works, Limited, is not responsible.

The Grand Trunk draft provides that the provisions of the Railway Act shall apply in respect of liability of the railway for loss or damage by fire to property or buildings adjoining said sidings, "caused by locomotives under the control of the Grand Trunk." The Berlin Machine Works, Limited, desires to add after the word "locomotives," "when on the property of the Berlin Machine Works, Limited." This appears to be reasonable, but might for consistency be worded "lands" instead of "property."

The Grand Trunk draft provides that the Berlin Machine Works, Limited, is to covenant and agree to fully insure and keep fully insured at all times while the agreement is in force, "all such buildings and property owned, leased or occupied by them adjoining such sidings." The Berlin Machine Works, Limited, desires to amend this by adding after the word "sidings," "within the boundaries of the Berlin Machine." This is reasonable, but might better be worded "within the boundaries of the Berlin Machine lands."

Clause 6 of the Berlin Machine Works, Limited, draft, as amended, may be accepted in lieu of Clause 4 of the Grand Trunk agreement. The clause, as amended, reads as follows:

"It is understood and agreed that as regards all questions arising between the parties hereto in respect of any loss or damage, no matter however, caused, to any goods or merchandise belonging or consigned to the Berlin Machine, contained in cars while on the said sidings, the conditions endorsed on the form of Bill of Lading approved by the Board of Railway Commissioners for Canada by Order No. 7562, of July 16, 1909, and such amending Order or Orders thereto as may issue, shall apply and govern; and that the provisions of The Railway Act and amendments thereto shall be applicable to and determine all questions relating to the liability of the Grand Trunk for loss or damage by fire to buildings or property adjoining said sidings caused by locomotives when on the lands of the Berlin Machine, under the control, of the Grand Trunk; and the Berlin Machine covenants and agrees with the Grand Trunk to fully insure and keep fully insured at all times while this agreement continues in force all such buildings and property owned, leased or occupied by them and adjoining said sidings within the boundaries of the said Berlin Machine lands as are insurable, and to assume and bear all loss and consequences resulting from neglect or failure to at all times maintain such insurance in force; and it is declared that the provision of this clause is one of the chief considerations moving the Grand Trunk to enter into this agreement."

By clause 6 of the Grand Trunk draft and Clause 8 of the Berlin Machine Works, Limited, draft, the agreement is provided for as running on from year to year. There is contained in the Grand Trunk draft the further proviso that the agreement shall run from year to year until terminated by mutual consent or by an Order of the Board of Railway Commissioners for Canada directing the operation of the Grand Trunk on said sidings to be discontinued. As the general operation on the sidings arises under the agreement and not under the Order of the Board, the necessity for this proviso is not apparent. The matter will be taken care of by a clause providing:

"This agreement shall be considered as running on from year to year or until terminated by mutual consent; provided that either party may at any time after the lapse of one year from the date of this agreement terminate it on two calendar months' notice in writing to the other."

Clause 7 of the Grand Trunk draft and clause 9 of the Berlin Machine Works, Limited, draft are identical and may be approved. The clause reads as follows:—

"The provisions of this agreement shall be binding upon and shall enure to the benefit of the successors and assigns of the parties hereto respectively."

A clause should be added to the agreement providing for a situation where the Berlin Machine Works, Limited, may desire to make an arrangement for an additional railway to use its tracks. This situation may be covered, by the following clause:—

"The Berlin Machine reserves the right to enter into an agreement or agreements identical herewith with any other railway or railways."

Attached hereto and marked B is a draft memorandum of agreement embracing the clauses above set out.

It is pointed out by the Grand Trunk that the question of joint operation between two or more companies will probably involve additional clauses being added. This, however, appears to be concerned with matters in which the owner of the sidings will not be interested, and no doubt can be satisfactorily agreed upon by the railways concerned, the right being reserved to apply to the Board for settlement of any disputes in connection with such clauses that parties are unable to agree upon. In

terms of what has already been set out, the Board has the same limitations in this as in the general matter.

November 10, 1919.

The Chief Commissioner, the Deputy Chief Commissioner, and Commissioners Goodeve and Boyce, concurred.

“B”

Memorandum of agreement made this _____ day of _____, in the year one thousand nine hundred and _____, by and between

The Grand Trunk Railway Company of Canada, hereinafter called “The Grand Trunk,” of the first part, and

Berlin Machine Works, Limited, a corporation having its head office and works at the city of Hamilton, Ontario, hereinafter called “The Berlin Machine” of the second part.

(1) That for the Berlin Machine business only, the Berlin Machine give the Grand Trunk the right, power and authority to enter on the lands and premises of the Berlin Machine with its locomotives, engines and train crews, and to operate upon and over the sidings thereon.

(2) That the terms and provisions of Order No. 12225, dated November 9, 1910, of the Board of Railway Commissioners for Canada—subject to such amending order or orders thereto as may issue—making provision for the protection of railway employees, especially as to the prohibition of keeping piles of materials, structures and obstructions a distance of not less than six (6) feet away from the gauge side of the nearest rails of said sidings shall be held to apply to all such sidings, and shall be complied with on the part of the Berlin Machine.

(3) That each of the parties hereto shall assume and be responsible for the maintenance and repairs of sidings situated on their own lands respectively, provided that where the necessary work of maintenance and repairs in respect of the sidings of the Berlin Machine, and also of keeping them free from ice and snow is, at the request of the Berlin Machine, performed by the railway, it shall be at the expense of the Berlin Machine; said expense to be settled for by them on account rendered.

(4) The said Berlin Machine reserves the right to at any time during the currency of this agreement change the location of the tracks within the boundaries of their own property, provided this shall be subject to and in compliance with the terms of the Board's Order No. 12225 above referred to, and such amending Order or Orders thereto as may issue; and provided, further, that one week's notice of intention to make much change shall be given in writing to the Grand Trunk; and if the change of location involves a change in the method of connection with the tracks on the Grand Trunk property, on account of curvature or other operating conditions, then the expense of such changes upon the property of the Grand Trunk shall be borne by the Berlin Machine.

(5) It is also agreed that each of the parties shall assume and bear all responsibility for all acts of negligence of its own servants and employees within the boundaries of the said Berlin Machine lands, and shall indemnify and save harmless the other parties herein from any and all claims for loss and injury to person or property arising out of or owing to such acts of negligence.

(6) It is understood and agreed that as regards all questions arising between the parties hereto in respect of any loss or damage, no matter however caused, to any goods or merchandise belonging or consigned to the Berlin Machine, contained in cars while on the said sidings, the conditions endorsed on the form of Bill of Lading approved by the Board of Railway Commissioners for Canada, by Order No. 7562 of July 16, 1909, and such amending Order or Orders thereto as may issue, shall apply

and govern: and that the provisions of the Railway Act and amendments thereto shall be applicable to and determine all questions relating to the liability of the Grand Trunk for loss or damage by fire to buildings or property adjoining said sidings caused by locomotives when on the lands of the Berlin Machine, under the control of the Grand Trunk; and the Berlin Machine covenants and agrees with the Grand Trunk to fully insure and keep fully insured at all times while this agreement continues in force all such buildings and property owned, leased, or occupied by them and adjoining said sidings within the boundaries of the said Berlin Machine lands as are insurable, and to assume and bear all loss and consequences resulting from neglect or failure to at all times maintain such insurance in force; and it is declared that the provision of this clause is one of the chief considerations moving the Grand Trunk to enter into this agreement.

(7) This agreement shall be considered as running on from year to year or until terminated by mutual consent, provided that either party may at any time after the lapse of one year from the date of this agreement terminate it on two calendar months' notice in writing to the other.

(8) The provisions of this agreement shall be binding upon and shall enure to the benefit of the successors and assigns of the parties hereto respectively.

(9) The Berlin Machine reserves the right to enter into an agreement or agreements identical herewith with any other railway or railways.

In witness whereof the Grand Trunk has hereunto affixed its corporate seal and the Berlin Machine have hereunto set their hand and affixed their seal on the day and year first above set forth.

Application of the Quebec, Montreal and Southern Railway Company that Order No. 28339 be made permanent, instead of between the 31st October and 1st day of May following in each year.

File 18727-2.

JUDGMENT.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

As a result of the report of the Board's Chief Operating Officer, an Order numbered 27741 issued on October 1, 1918, providing:—

"It is Ordered: That the Quebec, Montreal and Southern Railway Company be, and it is hereby, required (1) to arrange its timetable so as to extend its mixed train now due to arrive at Noyan Junction at 7.30 p.m. daily except Sunday through to Lacolle Junction, showing it to arrive at 8 p.m.; and its mixed train now due to leave Noyan Junction at 5.50 a.m. to leave Lacolle Junction at 6.35 a.m. and Noyan Junction at 7 a.m., arriving at Iberville at 8.20 a.m.; and (2) to arrange with the Grand Trunk Railway Company (a) to operate the said trains between Noyan Junction and Lacolle Junction at the times specified, (b) to honour tickets on such trains to and from Lacolle Junction, and (c) to sell tickets at Lacolle Junction to points on the Quebec, Montreal and Southern Railway."

This was subsequently amended by Order No. 27864 of November 19, 1918, which provided:—

"It is Ordered: That the said Order of the Board No. 27741, dated October 1, 1918, be, and it is hereby amended by striking out the figures '6.35,' '7,' and '8.20' in the seventh and eighth lines of the operative part of the Order and substituting therefor the figures '8.00,' '8.30,' and '10.00.'"

At the time the report was made, the Quebec, Montreal and Southern Railway Company ran their freight trains from Noyan Junction to Rouses Point, using the Grand Trunk Railway from Noyan Junction to Lacolle Junction and their own line (Napierville Junction Railway) from Lacolle to Rouses Point. It was pointed out by the Quebec, Montreal and Southern Railway Company that this movement was due to the fact that it had no satisfactory terminal facilities at Noyan Junction. It was submitted by the Chief Operating Officer that the service could be given by the Quebec, Montreal and Southern Railway Company making provision on their present mixed train through to Lacolle Junction, as against terminating at Noyan Junction, and picking up passengers at Lacolle Junction in the opposite direction. The matter, generally, was put on the ground that the service could be performed without any additional cost, it being pointed out that no additional equipment would be required as the train carried the equipment through, it being set out that there would be no extra coal or other expenses and no additional train or car-miles involved.

The reason for this service was set out in the Chief Operating Officer's report of September 18, 1918, as follows:—

"I submit herewith correspondence I have had with railway companies following up the matters discussed before the Board in connection with the Quebec, Montreal and Southern Railway service between Iberville Junction and Noyan Junction, on June 10 last, when attention was called to the fact that the withdrawal of the Rutland trains from the Q. M. and S. Ry., over which line they operated from Noyan Junction to Iberville Junction, and diverting them to run via Rouses Point and Grand Trunk Railway to Montreal, had cut off the passenger service entirely between Alburgh and Noyan Junction, making it impossible for a passenger from a point on the Q. M. and S. Ry., who desired to travel south through Alburgh, to get beyond Noyan Junction, on account of there being no passenger train service in operation south over the Grand Trunk or Rutland Railways.

I had a conference yesterday with the Passenger Departments of the Q. M. and S. Ry., Rutland Ry., and G. T. R.; the Rutland being represented by Mr. French, General Superintendent, and Mr. Grant, District Passenger Agent; the Q. M. and S., by Mr. Ferguson, General Passenger Agent; and the Grand Trunk by Mr. Bell, Passenger Traffic Manager, and Mr. Davidson, General Superintendent.

Mr. Grant pointed out that when the Rutland trains were being operated over the Q. M. and S. route, an analysis of the traffic showed that there was an average of one passenger per day from the Q. M. and S. moving south through Alburgh Junction.

The Q. M. and S. pointed out that while they ran freight trains from Noyan Junction to Rouses Point, using the G. T. R. Noyan Junction to Lacolle and their own line (Napierville Jct. Ry.) Lacolle to Rouses Point, it was because they had no terminal facilities at Noyan Junction, and they could not make a satisfactory schedule for passenger service owing to the Grand Trunk traffic and manner of using their tracks. They have a trackage agreement with the Grand Trunk.

The G. T. R. thought that the agreement did not provide for the handling of passenger traffic; but an examination of the correspondence available did not show any such limitation. The G. T. R. admitted they could provide the Q. M. & S. with trackage for a passenger movement, from Noyan Junction to Lacolle Junction, at which point connection with all lines, for passenger movement, could be made. The Q. M. & S. were not prepared to say that they would put on the service, but admitted that it could be done very easily for the movement southbound; but there would be some difficulty to overcome in the North-bound movement, in the matter of arranging to make satisfactory time between

Noyan Junction and Iberville Junction, on account of having to connect at the latter point with the C. P. R. for Montreal.

The Q. M. & S. train service at present is one mixed train per day, due to leave Bellevue Junction at 9.45 a.m., arriving Noyan Junction at 7.30 p.m. If this service were extended to Lacolle Junction, passengers desiring to go South by the night train which leaves Montreal at 8 p.m. would have plenty of time to make the connection. In the opposite direction, the train leaves Noyan Junction at 5.50 a.m., and arrives Bellevue Junction at 4.45 p.m., and is due at Iberville Junction at 7.10 a.m. To connect with the Rutland train, it would require to leave Lacolle Junction at about 6.35 a.m., making the time at Noyan Junction possibly 6.45 a.m. This would break the connection with the Montreal train on the C. P. R., now due at Iberville Junction at 7.36 a.m., but would deliver passengers at connection at 11.03 a.m., for Montreal, where they would arrive at noon, 12.25.

The service could be given by the Q. M. & S. simply providing to carry passengers on their present mixed train through to Lacolle Junction, as against terminating at Noyan Junction, and picking up passengers at Lacolle Junction in the opposite direction. No additional equipment would be required as the train now carries the equipment through; and I would suggest that this be considered."

Subsequent to the issuance of Order No 27741, the following notation of the Chief Operating Officer appears on file under date of November 12, 1918:—

"I had a further conversation with Mr. Fitzsimons on Friday last, and he expressed the opinion that as they required to send the engine through to Rouses Point during the winter months, they would be able to give effect to the Order for that season at least."

Under date of May 13, 1919, the Quebec, Montreal and Southern Railway Company wrote to the Board pointing out—

(1) That "at this season of the year" it is not necessary to run the trains in question to Rouses Point for engine and roundhouse facilities and doing so costs a large additional expense for which the railway received nothing; and

(2) That the number of passengers handled on Q. M. & S. trains between Noyan Junction and Lacolle Junction showed that from November 25 to May 13 there were carried 115 passengers from Noyan Junction to Lacolle Junction, and 60 in the reverse direction. That is to say, the 288 movements involved in the period in question averaged less than 2 passengers per train movement.

Attention was drawn to the fact that on the traffic in question, all the revenue went to the Grand Trunk Railway. This is covered by clause 4 of the agreement between the Grand Trunk and the Quebec, Montreal and Southern Railway Companies, whereunder the latter obtains trackage rights over the Grand Trunk Railway between Noyan Junction and Lacolle Junction. The clause reads:—

"It is understood and agreed that the use of the joint section is given to the Southern company for the purpose only of carrying through traffic over the joint section. The Southern company, therefore, shall not be entitled to and shall not handle any traffic destined to or originating at stations between Lacolle and Noyan Junction, whatever may be the origin or destination of such traffic. Should the Southern company handle any such traffic, either passenger or freight, the amount paid in respect of its carriage on the joint section or part thereof shall belong exclusively and be paid by the Southern company to the Grand Trunk. On the Southern Company's trains free transportation of either company shall be honoured, if issued in accordance with legal requirements."

On consideration of the representations so made and on the report of the Chief Operating Officer, Order No. 28339 of May 19, 1919, issued limiting the period during which the service was to be given to that falling between October 31 and May 1, following in each year. The Order recited the limited amount of traffic involved and the fact that the movement to Rouses Point to house and care for the engine was unnecessary.

Under date of October 6, 1919, the railway company applied to be relieved from the terms of Order No. 28339, pointing out—

“The reason for this request is that it will not be necessary to run our mixed trains beyond Noyan Junction, which it was necessary to do in previous years on account of requiring engine terminal facilities at Rouses Point, N.Y. The southern terminal of our mixed trains will be at the southern terminal of the Quebec, Montreal and Southern Railway Company at Noyan Junction after October 31, the same as it is now and has been since the effective date of Order No. 28339.”

The matter was set down for hearing and supplementary written statements have been filed.

The situation may be put in summary form—

(1) The traffic involved is one on which the entire earnings goes to the Grand Trunk;

(2) The service was predicated on the movement to Rouses Point by the Quebec, Montreal and Southern being a necessary one, with the consequence that the service directed by the Board entailed no additional expense on the railway;

(3) Since all the revenue on the light traffic involved goes to the Grand Trunk, there is no deduction by way of passenger earnings from the cost of the service to the Quebec, Montreal and Southern Railway Company;

(4) The service to Rouses Point is no longer found necessary by the railway;

(5) The economies claimed by the railway by having its engine stop at Noyan instead of going to Rouses Point have been checked and are found to amount to \$22.96 per day.

The service was directed because the engine was going through to Rouses Point and it was considered that there was no additional cost entailed. Now that the engine does not go through to Rouses Point, the justification for the Order has passed and it may be rescinded.

The Deputy Chief Commissioner, Commissioners Boyce and Goodeve, concurred. November 12, 1919.

ORDER No. 28034.

In the matter of the Order of the Board No. 27741, dated October 1, 1918, as amended by Order No. 27864, dated November 19, 1918, requiring the Quebec, Montreal and Southern Railway Company to provide a mixed train service between Noyan Junction and Lacolle Junction, as specified in the said Orders; and Order No. 28339, dated May 19, 1919, relieving the said Company from complying with the requirements of the said Order No. 27741, as amended, until the 31st day of October, 1919, and requiring the Company to give effect to the said Order, as amended, between the 31st day of October and the 1st day of May following in each year.

File No. 18727.2

TUESDAY, the 18th day of November, A.D., 1919.

S. J. McLEAN, *Assistant Chief Commissioner.*HON. W. B. NANTEL, *Deputy Chief Commissioner.*A. S. GOODEVE, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, October 21, 1919, the Quebec, Montreal and Southern Railway Company being represented at the hearing, and what was alleged—

It is ordered: That the said Orders Nos. 27741, 27864, and 28339, dated respectively October 1, 1918, November 19, 1918, and May 19, 1919, made herein, be, and they are hereby, rescinded.

A. C. BOYCE,
Commissioner.

ORDER No. 28965.

In the matter of the application of the Canadian Pacific Railway Company, herein-after called the "Applicant Company," under Section 188 of the Railway Act, 1919, for approval of the location of proposed new station at Marchwell, Saskatchewan, at mileage 95.5 Bredenburg Subdivision, as shown on the plan dated Winnipeg, August 29, 1919, on file with the Board under file No. 26183.

MONDAY, the 3rd day of November, A.D., 1919.

S. J. McLEAN, *Assistant Chief Commissioner.*A. S. GOODEVE, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of the Chief Operating Officer of the Board, and the consent of the Rural Municipality of Langenburg, No. 181, filed—

It is ordered: That the location of the Applicant Company's proposed new station at Marchwell, in the Province of Saskatchewan, at mileage 95.5, Bredenburg Subdivision, as shown on the said plan on file with the Board under file No. 26183, be, and it is hereby, approved; and that Order No. 24099, dated August 13, 1915, made herein, be, and it is hereby, rescinded.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 28982.

In the matter of the application of the Corporation of the City of Toronto, in the Province of Ontario, hereinafter called the "Applicant," for an Order apportioning the cost of alterations to the mains of the Consumers' Gas Company of Toronto, necessitated by the construction of subways at Yonge Street, Avenue Road, Bathurst Street, Davenport Road, Howland Avenue, Spadina Road, Shaw Street, Christie Street, Dovercourt Road, and Ossington Avenue, in connection with the North Toronto Grade Separation work.

File No. 9437-153.

FRIDAY, the 7th day of November, A.D., 1919.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

HON. W. B. NANTEL, *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, September 16, 1919, in the presence of Counsel for the Applicant, the Consumers' Gas Company of Toronto, and the Canadian Pacific and Canadian National Railways, and what was alleged:

It is ordered: That the application be, and it is hereby, refused.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 28993.

In the matter of the application of the Toronto, Hamilton and Buffalo Railway Company, hereinafter called the "applicant company," in pursuance of the provisions of General Order No. 119, dated January 31, 1914, for authority to remove its station agent at Mineral Springs, in the township of Ancaster, province of Ontario, and to close the station as an agency point:

File No. 4205.223.

MONDAY, the 10th day of November, A.D. 1919.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Hamilton, October 29, 1919, in the presence of counsel for the applicant company and the township of Ancaster, and what was alleged,—

It is ordered: That the applicant company be, and it is hereby, relieved, pending further order, from maintaining a station agent at Mineral Springs, in the township of Ancaster, province of Ontario, subject to and upon the conditions that the applicant company arrange (a) to keep the station clean, heated, and lighted when necessary;

(b) to take care of express shipments to and from the said station; and (c) to take care of less than carload freight to and from the said station in accordance with the requirements of the General Order of the Board No. 235, dated May 22, 1918.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 28986.

In the matter of the Order of the Board No. 27352, dated June 25, 1918, authorizing the construction of a station by the Grand Trunk Pacific Branch Lines Company at Hoey, Saskatchewan, in section 12, township 45A, range 27, west 2nd meridian, on its Prince Albert branch.

File No. 28296.

WEDNESDAY, the 12th day of November, A.D. 1919.

S. J. McLEAN, *Asst. Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon its appearing that the said station has not yet been constructed, and reading the application on behalf of the Board of Trade of Hoey and Rural Municipality No. 431, Hoey, for the completion of the said station and the appointment of a station agent at the point in question; and upon the report and recommendation of an inspector of the Board, concurred in by its Chief Operating Officer,—

It is ordered: That the Grand Trunk Pacific Branch Lines Company be, and it is hereby, directed forthwith to appoint a station agent at Hoey, in the province of Saskatchewan; and to construct and complete the said station not later than the 30th day of June, 1920.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 29009.

In the matter of the consideration by the Board of the Canadian Car Demurrage Rules as affected by strikes.

File No. 1700.259.

THURSDAY, the 13th day of November, A.D. 1919.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Toronto, October 31, 1919, the Canadian Car Demurrage Bureau, Grand Trunk, Canadian National, and Canadian Pacific Railway Companies, Michigan Central Railroad Company, and Toronto and Montreal Boards of Trade being represented at the hearing, and what was alleged—

Is is ordered: That the matter be, and it is hereby, dismissed.

A. C. BOYCE,
Commissioner.

ORDER No. 29047.

THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA.

In the Matter of the General Order of the Board No. 119, dated January 31, 1914, and the application of the Michigan Central Railroad Company, hereinafter called the "Applicant Company," for authority to remove its station agent at Hewitt, in the Province of Ontario.

File No. 4205.230.

WEDNESDAY, the 19th day of November, A.D., 1919.

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of an Inspector of the Board, concurred in by its Chief Operating Officer, the Township of Wainfleet, consenting—

It is ordered: That the applicant company be, and it is hereby, granted leave, pending further Order, to remove the station agent at Hewitt, in the Province of Ontario, subject to and upon the condition that a caretaker be appointed to see that the station is kept clean, heated, and lighted when necessary; and to take care of L.C.L. freight and express shipments.

A. C. BOYCE,
Commissioner.

November 20, 1919.

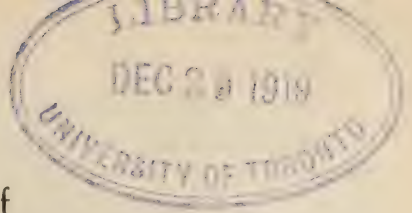
CIRCULAR No. 184.

File No. 45. Reporting of accidents.

Reports covering accidents attended by personal injury, are, in many cases, being addressed to the Secretary. Railway Companies, subject to the Board's jurisdiction, are requested to give instructions that these accident reports be addressed to the Chief Operating Officer, Board of Railway Commissioners, Ottawa, Ont., in accordance with the requirements of General Order No. 244, dated July 26, 1918.

By order of the Board.

A. D. CARTWRIGHT,
Secretary.



The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. IX

Ottawa, December 15, 1919

No. 19-a

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MEMORANDUM BY THE CHIEF COMMISSIONER *re* SECTION 345 OF THE RAILWAY ACT.

After having considered this Section very carefully, I have come to the conclusion that the whole purport of the Section was to give to the railway companies, within certain limits, the right to carry traffic at free or reduced rates; and to such classes of persons and, in some cases, individuals, as the companies may decide upon, subject in certain cases to the approval and permission of this Board. The whole Section is preceded by the following words: "Nothing in this Act shall be construed to prevent." It then refers to five specific classes of persons and a careful examination shows that there is no great change between the present Act and its predecessor, excepting that in subclauses (a) and (c) a limitation is placed upon the power of the railway companies and in subclauses (d) and (e) an extension is provided for.

Under clause (a) the most which the railway companies can do towards reduced fares for ministers of religion, etc., is to carry them at one-half the regular fare, and in clause (c) the most they can do for members of the Provincial Legislatures is to carry them free within points in the province to which they belong. It is not clear whether members of the press can be carried free beyond the province in which they reside, but, as there is no comma after the word Legislatures, and nothing to designate a difference in the two classes, I am rather inclined to the opinion that the limiting words "between points within the province" apply to the latter as well as the former. Clause (c) also extends the privilege to dependent members of the families of any persons who are entitled to free transportation under Section 346 of this Act, and clauses (d) and (e) also extend the right to employees of the Department of Railways and Canals and to the Governor General and Staff, etc.

This narrows the question down to the interpretation of the last line of clause (c), viz., "or to such other persons as the Board may approve or permit" and to the proviso immediately following subsection (e), both of which are to be found in the previous Act. These words evidently mean something, and it is my opinion that a railway company may decide to grant the privilege of free or reduced transportation to any person, or class of persons, subject always to the approval or permission of the Board, and also subject to the proviso herein referred to, which, in my opinion, is a regulating power rather than an enacting one.

To apply this opinion specifically to the request made by the Canadian Railway War Board under date of October 16th last, it would seem to me that the railways would have a right, subject to our approval or permission, to grant free or reduced

transportation to those parties mentioned in clauses (b), (d), and (e), as well as to all others. Thus, if the railway companies decide to grant free transportation to the Immigration and Customs Officials of the United States, to the families of former and deceased employees of the railways, and the families of former employees of transportation companies, then, if this Board approves or permits, they will be within the law in granting such transportation.

I am not so clear as to the real intention of Parliament with reference to the proviso hereinbefore referred to because, taken in its general sense, we are given the right to extend, restrict, limit, or qualify the carriage of traffic by the companies as provided under this Section, but I have come to the conclusion that this is only meant as a regulating clause and our powers are restricted to extending, restricting, limiting, or qualifying what the companies may propose to do and, therefore, gives us no originating jurisdiction; but when the railway companies come to us asking that certain persons or classes of persons be given the privilege of free transportation, we would have the right to extend, restrict, limit, or qualify the same. If I am right in my general interpretation of the clause, then I think we have the power either to approve or disapprove of all the requests made by the Canadian Railway War Board in their letter of the 16th of October hereinbefore referred to, and, as they seem to me to be proper requests, I am in favour of approving the same and permitting the issuing of transportation as requested.

November 12, 1919.

The Assistant and Chief Commissioner concurred.

GENERAL ORDER NO. 274.

THURSDAY, the 20th day of November, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

In the matter of the application of the Canadian Railway War Board, on behalf of railway companies subject to the jurisdiction of the Board, for free transportation under Section 345 of The Railway Act, 1919, File No. 496.26.

Upon reading the application dated the 16th day of October, 1919, and considering what has been urged in support thereof, it is ordered that the Railway Companies of Canada subject to the jurisdiction of the Board be permitted, until further order, to carry free of charge the following persons, viz.:—

(a) Department of Immigration of Dominion of Canada:

For such representatives of the Department as may be required by the Minister or Deputy Minister.

(b) Departments of Immigration and Customs of the United States:

For such representatives of the Departments as may be required by the Commissioner or Deputy Commissioner of Immigration or Collector or Deputy Collector of Customs in charge of the District.

(c) Fire Rangers:

Fire Rangers within their respective Districts, employed or authorized by Provincial Governments.

(d) Families of former and deceased employees of railways.

(e) Former employees of transportation companies and their families.

(f) Deputy Ministers of Departments of the Federal Government, and those having the rank of Deputy Ministers.

F. B. CARVELL,
Chief Commissioner.

Complaint of Peters-Duncan Ltd., Toronto. Melons, l.c.l., loose. File 29514.

REPORT OF CHIEF TRAFFIC OFFICER OF THE BOARD.

Melons are classified in Canadian Freight Classification No. 16 as follows:—

"In bags or crates, l.c.l.	1st class.
Loose, l.c.l.	1½ 1st class.
Carloads, loose, or in bags or crates, minimum 24,000 lbs.	4th class.

Ordinary fresh fruits are rated 3rd class in carloads of the same minimum weight, viz. 24,000 lbs.; but by judgment dated October 10, 1904, the Board required the railways east of Fort William to carry these fruits, described in the Classification as "Fruits, fresh, not otherwise specified," and which are classified 3rd class, on the following reduced bases, namely, 4th class, carloads, 20,000 lbs.—a reduction of 4,000 lbs. in the weight and one class in the rate, and the judgment further prescribed 2nd class for less than carloads of 10,000 lbs. and over.

The Judgment did not apply to melons which, as shown above, were already rated 4th class in carloads.

The explanation of higher rating for loose melons is obvious when the extra handling and liability to damage and pilferage are considered.

The present complainants admit the reasonableness of the l.c.l. rating, but asked at first that melons, when forming part of a mixed carload, be accepted loose, as the objections present in the case of l.c.l. shipments would not obtain in the case of a full carload, even although the melons might form but a small portion thereof. The railways agreed to this; not only that, but although not included therein, have given melons the benefit of the Board's requirement of 1904 by issuing a tariff as follows:—

"Fresh fruit, including melons and vegetables (in baskets, boxes or crates):—

Carloads, straight or mixed, minimum 20,000 lbs. . . .	4th class.
Lots of 10,000 lbs. or over.	2nd class.
Less than 10,000 lb. lots.	1st class.

Melons to be accepted *loose* or in packages in straight carloads, or in mixed carloads with fruit or vegetables."

Complainants now request the benefit of this "loose" concession in connection with shipments of 10,000 lbs. and over. Such a shipment is, of course, less than a carload, and the disabilities mentioned above would still apply regardless of the quantity, as the remainder of the car has to be utilized for other freight.

In view of the judgment of 1904, of the concession already made by the carriers, and of the facts as stated, I beg to report against the second application.

OTTAWA, November 18, 1919

Commissioners Goodeve and Boyce adopted the report as the judgment of the Board.

November 28, 1919.

ORDER NO. 29083.

In the matter of the application of the Toronto, Hamilton and Buffalo and the Grand Trunk Railway Companies, hereinafter called the "Applicant Companies," under Sections 33, 181, 182, and 252 of the Railway Act, 1919, for authority to discontinue operating over the sidings, or spurs, from the railways of the Applicant Companies, upon the premises of the Berlin Machine Works, Limited, in the City of Hamilton, Province of Ontario.

FRIDAY, the 21st day of November, A.D. 1919.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

HON. W. B. NANTEL, *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Case No. 2818.

Upon hearing the application, and reading the submissions filed in support thereof and on behalf of the Berlin Machine Works, Limited, and the forms of agreements submitted by the parties respectively,—

It is ordered: That the Applicant Companies be, and they are hereby, authorized to operate their engines and trains over the sidings, or spurs, from the railways of the Applicant Companies, upon the premises of the Berlin Machine Works, Limited, in the City of Hamilton, Province of Ontario, in accordance with and subject to the terms and conditions following, namely:

1. That for the business of the Berlin Machine Works, Limited, only, the said Company give the Grand Trunk Railway Company the right, power, and authority to enter on the lands and premises of the Berlin Machine Works, Limited, with its locomotives, engines, and train crews, and to operate upon and over the sidings thereon.

2. That the terms and provisions of the Order of the Board No. 12225, dated the 9th November, 1910—subject to such amending Order or Orders thereto as may issue—making provision for the protection of railway employees, especially as to the prohibition of keeping piles of materials, structures, and obstructions a distance of not less than six (6) feet away from the gauge side of the nearest rails of the said sidings, shall be held to apply to all such sidings, and shall be complied with on the part of the Berlin Machine Works, Limited.

3. That each of the parties hereto assume and be responsible for the maintenance and repairs of sidings situated on its own lands, respectively: Provided that where the necessary work of maintenance and repairs in respect of the sidings of the Berlin Machine Works, Limited, and also of keeping them free from ice and snow, is, at the request of the Berlin Machine Works, Limited, performed by the railway company, it shall be at the expense of the Berlin Machine Works, Limited; the said expense to be settled for by them on account rendered.

4. That the right be reserved to the Berlin Machine Works, Limited, at any time during the currency of this agreement, to change the location of the tracks within the boundaries of their own property; Provided that this shall be subject to and in compliance with the terms of the Order of the Board No. 12225, above referred to, and such amending Order or Orders thereto as may issue; and provided, further, that one week's notice of intention to make such change shall be given in writing to the Grand Trunk Railway Company, and if the change of location involves a change in the method of connection with the tracks on the Grand Trunk Railway Company property on account of curvature or other operating conditions, then the expense such changes upon the property of the Grand Trunk Railway Company shall be borne by the Berlin Machine Works, Limited.

5. That each of the parties assume and bear all responsibility for all acts of negligence of its own servants and employees within the boundaries of the said Berlin Machine Works' lands, and indemnify and save harmless the other parties herein from any and all claims for loss and injury to person or property arising out of or owing to such acts of negligence.

6. That, as regards all questions arising between the parties hereto in respect of any loss or damage, no matter however caused, to any goods or merchandise belonging or consigned to the Berlin Machine Works, Limited, contained in cars while on the said sidings, the conditions endorsed on the form of Bill of Lading approved by the Order of the Board No. 7562, dated July 16, 1909, and such amending Order or Orders thereto as may issue, shall apply and govern; and that the provisions of The Railway Act, 1919, and amendments thereto, be applicable to and determine all questions relating to the liability of the Grand Trunk Railway Company for loss or damage by fire to buildings or property adjoining the said sidings, caused by locomotives when on the lands of the Berlin Machine Works, Limited, under the control of the Grand Trunk Railway Company; the Berlin Machine Works, Limited, fully to insure and keep fully insured at all times during the operation of the said sidings all such buildings and property owned, leased, or occupied by them and adjoining the said sidings within the boundaries of the lands of the Berlin Machine Works, Limited, as are insurable, and to assume and bear all loss and consequences resulting from neglect or failure at all times to maintain such insurance in force.

7. That operation of the said sidings upon the terms herein continue from year to year, or until discontinued by mutual consent: Provided that either party may at any time after the lapse of one year from the date of this Order, discontinue such operation on two calendar months' notice in writing to the other.

8. That the provisions of this Order be binding upon and enure to the benefit of the successors and assigns of the parties hereto respectively.

9. That this Order be without prejudice to the right of the Berlin Machine Works, Limited, to enter into similar traffic arrangements with any other railway company or companies.

W. B. NANTEL,
Deputy Chief Commissioner.

ORDER No. 29086.

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 188 of the Railway Act, 1919, for approval of the location and details of station proposed to be erected at Corinne, Saskatchewan, as shown on the plans on file with the Board under file No. 23767:

MONDAY, the 1st day of December, A.D. 1919.

A. S. GOODEVE,
Commissioner.

A. C. BOYCE, K.C.,
Commissioner.

Upon reading what is filed in support of the application and on behalf of the Rural Municipality of Bratt's Lake, No. 129; and upon the report and recommendation of the Chief Operating Officer of the Board.

It is ordered: That the location and details of the Applicant Company's proposed station at Corinne, in the Province of Saskatchewan, as shown on the plans on file

with the Board under the said file No. 23767, be, and they are hereby, approved; the said station building to be erected in accordance with the Applicant Company's Standard No. 4 Station Plan, on file with the Board.

A. C. BOYCE,
Commissioner.

CIRCULAR NO. 185.

NOVEMBER 26, 1919.

File 23177. Smoke Nuisance from Railway Stationary plants.

Complaint has been made to the Board of serious nuisance arising in cities by reason of the befouling of the atmosphere by dense or opaque smoke emitted from the stationary plants of railways in such municipalities.

The Board desires to be informed by the railway companies subject to its jurisdiction, within thirty days of the date of this circular, whether they are agreeable to the issuance of a General Order extending the application of General Order No. 18 to stationary plants and requiring that such stationary plants be equipped so as to prevent the unnecessary and unreasonable emission of dense or opaque smoke, failing which a hearing of all parties involved will be held and a decision arrived at in the matter.

By Order of the Board,

A. D. CARTWRIGHT,
Secretary.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. IX

Ottawa, January 1, 1920

No. 20

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Application for an order under sections 312, 316, 317, 319 and 320, directing the Grand Trunk Railway Company to provide reasonable and proper facilities for the unloading, handling, storing and delivery of the applicant's coal at the coal trestle erected upon the lands of the said Grand Trunk Railway Company, in its station yards at Isabella street, Ottawa; and for a mandatory order directing the said railway company to forthwith terminate a certain agreement, or lease in respect to said coal trestle, bearing date 25th October, 1916, and made between the said railway company and the Coal Trestle Company, Limited.

File 29741.

Heard at Ottawa, December 2, 1919.

JUDGMENT.

Mr. COMMISSIONER GOODEVE:

This case concerns the complaint of Messrs. O'Reilly & Belanger, Limited, per W. C. McCarthy, for alleged undue discrimination in the matter of proper facilities for the unloading, handling, storing and delivery of the applicant's coal at the coal trestle upon the lands of the Grand Trunk Railway at Isabella street, Ottawa; and asking for an order of the Board to forthwith terminate a certain agreement, or lease, bearing date of 25th of October, 1916, and made between the said railway company and the Coal Trestle Company, Limited.

It would appear from the evidence on file and at the hearing that previous to the erection of the trestle complained against there had been in existence at this point a trestle owned and operated by a number of coal dealers in the city of Ottawa for some twenty-five years prior to 1916, amongst whom were the applicants. No evidence was submitted as to the exact date of the erection of this coal trestle, nor as to the terms and conditions under which it was built and made use of by these coal dealers; nor was any evidence submitted showing the amounts, if any, paid by the several dealers for the use of this trestle, or the use of the land upon which it was erected.

In the year 1916 the superintendent of the Grand Trunk notified the users of this trestle that it was in such a state of disrepair that there was not a sufficient margin of safety, and that they would have to rebuild or repair the trestle. As a result of this notice several conferences were held between the users of the trestle and the superintendent of the Grand Trunk Railway as to whether it was better to repair the existing trestle or build a new one.

In the early stages of these negotiations some of the coal dealers decided that their business did not require the accommodation at this particular point, and decided

to drop out. Mr. Heney's name was given as one of those. The applicants, however, were among those who continued to take part in the negotiations.

It would appear that as a result of these negotiations a proposition was submitted by the Grand Trunk Railway Company for the construction of a new trestle at this point, the terms of which were acceptable to the coal dealers except as to the length of the term. The Grand Trunk proposed a five-year term and the coal dealers, after consultation among themselves, decided to ask the Grand Trunk to extend it to a seven-year term upon the same conditions as the original proposition.

Mr. Coleman, acting on behalf of the Grand Trunk Railway, said that he had no authority to go farther, but suggested that a deputation go to Montreal and see the authorities there in connection with the matter. After leaving Mr. Coleman's office it was apparently agreed among the coal dealers interested to send a delegation to Montreal to see if they could secure the extension asked for.

As a result a delegation was sent to Montreal, the members of which were apparently all shareholders in a corporation known as the Coal Trestle Company, Limited, and an agreement was made between this company and the Grand Trunk Railway Company of Canada, a copy of which is on file in evidence. Under this agreement the lessees were to advance forthwith to the Grand Trunk Railway Company the costs of renewing and erecting the proposed new coal trestle with all necessary tracks, which cost had been estimated at the sum of \$23,800, and on receipt of such sum the company was to proceed with the work and complete the same. This sum being an estimate only, the cost was to be subject to adjustment after completion of same.

Among other clauses of the agreement is the following:—

"To have and to hold the said demised premises for and during the term of seven (7) years, to be computed from the first day of April, one thousand nine hundred and seventeen, and from thenceforth next ensuing, and fully to be complete and ended, yielding and paying therefor, monthly and every month, during the said term hereby granted unto the company, its successors or assigns, the sum of fifty-six (\$56) dollars, to be payable on the first days of each and every month during the continuance of said term, without any deduction or abatement whatsoever; the first of said payments to be made on the first day of April, 1917.

"The said premises are hereby leased to be used for the following purposes only: that is to say, upon which to erect and maintain a coal trestle, with all suitable appliances for economically and expeditiously handling, unloading and storing coal, the said coal trestle to be erected and maintained according to plans approved by the superintendent of the company, and to his entire satisfaction at all times. It is also understood that the said coal trestle is to be subdivided into bins or compartments, and the lessees are hereby given authority to sublet such compartments to tenants subject to terms and conditions of this lease, and for such rentals as may be agreed on."

It is to be noted that under this clause the Coal Trestle Company, Limited, was given authority to subdivide the trestle into bins or compartments, and sublet such compartments to tenants subject to terms and conditions of this lease, and at such rentals as might be agreed upon. So that it is clear that subject to the terms and conditions of the lease, the Coal Trestle Company, Limited, had full power to enter into agreements and make contracts with such tenants as they might desire. After the signing of this agreement and the completion of the trestle, the Coal Trestle Company, Limited, proceeded to sublet these bins or compartments, and decided to fix the rental at a rate of 90 cents per ton space.

The applicants claim that the rate fixed is unreasonable and unfair, although the evidence went to show that all the lessees paid the same rate.

The grounds upon which applicants based their claim was that all the other tenants, with the exception of themselves, were shareholders in the Coal Trestle Com-

pany, Limited, and that, therefore, it would make no difference to these shareholders what amount they paid as it would come back to them in the way of dividends through the Trestle Company.

No evidence was submitted by either party to show the amount of ton space occupied by the different users, nor was any evidence submitted to show whether all the users of the trestle owned the same number of shares in the Coal Trestle Company, Limited. It will readily be seen that unless all the stock holders in the Coal Trestle Company, Limited, owned an equal proportion of the stock, and occupied the same amount of space as users of the trestle, they would have a very vital interest as to whether the rental fixed was a fair and equitable one.

It was further claimed by the applicants that in fixing the rate at 90 cents per ton space the Coal Trestle Company had taken into consideration the fact that it was the owner of a certain piece of land which had been purchased by it for the purpose of the erection of a coal trestle, but which had never been built, and that the interest and taxes on this unused land was charged as part of the carrying charges of the Coal Trestle Company, Limited.

While these were the reasons given by counsel for the applicants that they consider the rental fixed as unfair, no evidence was submitted to substantiate these statements. It was, however, shown that the question of the fairness of the rate is at present before the Supreme Court of Ontario, and I do not think that it is one in any case which this Board is called upon to decide.

The applicants, however, argue that as a result of the rental asked by the Coal Trestle Company, Limited, the Grand Trunk is indirectly exercising undue discrimination against them in that if the rental asked is enforced they will be compelled either to pay a rate which, in their view, is unfair, or to secure some other place and means for unloading their coal which would not be so convenient, or would involve a greater cost than that paid by the users of the trestle who are doing business in competition with them. They argued further that as they occupied a space in the original trestle for a great number of years that they had what amounted to a vested right which should have been protected by the Grand Trunk Railway Company, Limited.

As already stated no evidence was submitted to show upon what terms or conditions the original trestle was used, and I do not think, in the absence of such evidence, that much weight may be given to this claim.

The Grand Trunk's reply is that it is ready to provide, and it has always provided applicants with "adequate and suitable accommodation for the unloading and delivering" of their coal from the railway company's cars at Ottawa, and cannot legally be required to do more than this under the provisions of the Railway Act; that it is not the business nor the duty of a railway company to provide trestles for persons who carry on a coal business; that no discrimination has been practiced by the company against the applicants, and if the applicants are not satisfied with the rental charged by the trestle company over which the railway company has no control other than the provision in the agreement referred to, they can procure suitable land either from the railway company or some other landowner to erect a trestle for their own use.

A number of cases were cited by the Grand Trunk Railway Company in support of its position, among them being that of the Cuneo Fruit and Importing Co. v. Grand Trunk Ry. Co., 18 C.R.C. 414, which, I think, involves the same principle. This was a case in which an old unused station owned by the Grand Trunk was converted into a fruit sale market, and space had been allotted and rented for years at a uniform rate to various fruit dealers. The Cuneo Fruit and Importing Co. made application for space in this building but were refused on the ground that all the space was already occupied. The evidence in this case clearly shows that the Cuneo Fruit people were at a disadvantage as compared with their competitors in not being able to secure space in this building.

Notwithstanding this, for reasons cited in the judgment it was held that "Under the Act the statutory duties of the railway company to furnish facilities relate, in so far as the terminal station is concerned, merely to the unloading and delivery of the goods, and do not include facilities for their sale; thus the prohibition against undue preference, or unjust discrimination in furnishing facilities do not apply to the failure or refusal of a railway company to allot space to a wholesale fruit firm in a building owned by it and used by other fruit dealers as a market into which the railway track runs."

In the present case the trestle is not owned by the railway company, but is owned by a company duly incorporated, and who has leased land from the railway company under similar terms granted to other applicants, for the erection of works for the carrying on of its own business with greater facility and dispatch, and at a lesser cost.

While it may be, as claimed by the applicants, that unless they can secure facilities at this plant upon terms satisfactory to themselves, they will not be able to do business on as advantageous terms as their competitors, I am of the opinion that no case of discrimination has been made as against the Grand Trunk Railway. I do not think, therefore, that this Board has jurisdiction to fix the terms of rental with the Coal Trestle Company, Limited, or to compel the Grand Trunk Railway Company to cancel its agreement with the Trestle Company.

OTTAWA, December 10, 1919.

The Deputy Chief Commissioner and Commissioner Boyce concurred.

Application of the Winnipeg Board of Trade for an order determining whether, or to what extent, the Car Demurrage Rules shall apply in connection with delays to cars due to the general strike at Winnipeg during the months of May and June last.

File No. 1700.259.1.

ORAL JUDGMENT.

Delivered by the Chief Commissioner at sittings of the Board at Winnipeg, November 15, 1919.

"The Board have decided that the offer made by the railway companies in this matter is, under the circumstances, fair and equitable. We have therefore decided that the various business concerns shall pay demurrage at the rate of one dollar per day, as suggested by the railway companies, from the commencement of the strike to the fifth day after its termination We do not think the situation in the Winnipeg strike was such that we would be justified in asking the railway companies to go below the amount they require, namely, one dollar per day."

ORDER No. 29134.

In the matter of the application of the Winnipeg Board of Trade for an order determining whether, or to what extent, the Car Demurrage Rules shall apply in connection with delays to cars due to the general strike in Winnipeg during the months of May and June, 1919.

File No. 1700.259.1.

TUESDAY, the 9th day of December, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Winnipeg, November 15, 1919, the Winnipeg Board of Trade, Empire Sash and Door Company,

Limited, Imperial Oil Company, Limited, Blackwood, Limited, E. L. Drewry, Limited, Canadian Manufacturers' Association, Canadian Car Service Bureau, and Tees and Persse being represented at the hearing, and what was alleged—the railway companies affected consenting,—

It is ordered: That the demurrage toll to be charged by railway companies in connection with delays to cars at Winnipeg due to the general strike in Winnipeg, from May 15 to the fifth day after its termination, namely, July 1, 1919, both dates inclusive, be \$1 per car per day.

S. J. McLEAN,
Assistant Chief Commissioner.

Complaint of James Richardson & Sons, Limited, et al., against the fee of \$2.50 proposed to be charged by the Canadian Pacific Railway Company's Telegraph and the Great North Western Telegraph Company for recording a registered address as set forth in a circular letter, dated November 20, 1919, issued by the said telegraph companies.

File No. 10041.92.

The ruling of the Board is set out in the Chief Commissioner's memorandum, dated December 24, 1919, as follows:—

"The Board has considered the substance of the application of James Richardson & Sons, Limited, *re* the proposal of the telegraph companies to charge a fee of \$2.50 for registering cable addresses. I am of the opinion that the charge is not a rate under the control of this Board because it is a charge made by the telegraph companies for a service to be performed by the cable companies, over which we have no jurisdiction. In other words, the telegraph company is acting to some extent as an agent for the cable company by devising a means by which one or two words may answer the purpose of half a dozen words which would be charged for individually by the cable company. Therefore, I do not see that we have any jurisdiction to interfere."

ORDER No. 29147.

In the matter of the application of the Canadian National Railway Company, hereinafter called the "applicant company," under section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its line of railway known as the Grenville Cut-off, which leaves the Lachute Subdivision at a point near mileage 60, west from Joliette, in lot 359, range 1, block C, in the township of Chatham, county of Argenteuil, and province of Quebec, and connects with the Grenville Subdivision at a point in lot 368, range 1, block C, township of Chatham, a distance of 6.133 feet.

File No. 28889.3.

WEDNESDAY, the 17th day of December, A.D. 1919.

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

It is ordered: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its line known as the Grenville Cut-off, which leaves the Lachute Subdivision at a point near mileage 60, west from Joliette, in lot

359, range 1, block C, in the township of Chatham, county of Argenteuil, province of Quebec, and connects with the Grenville Subdivision, at a point in lot 368, range 1, block C, township of Chatham, a distance of 6.133 feet.

A. C. BOYCE,
Commissioner.

ORDER No. 29124.

In the matter of the application of the Toronto Suburban Railway Company, under section 323 of the Railway Act, 1919, for approval of by-law authorizing W. J. Radford, in respect of passenger tolls, and Frank Butcher, in respect of freight tolls, to prepare and issue tariffs of the tolls to be charged by the said railway company, on file with the Board under file No. 29817.

SATURDAY, the 6th day of December, A.D. 1919.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the by-law of the Toronto Suburban Railway Company, passed November 20, 1919, on file with the Board under the said file No. 29817, be, and it is hereby, approved.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 29117.

In the matter of the application of residents of Sylvan Lake, Alberta, for an order directing the Canadian Pacific Railway Company to appoint a station agent at that point.

File No. 4205.231.

TUESDAY, the 9th day of December, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Calgary, November 27, 1919, the applicants and the railway company being represented at the hearing, and what was alleged,—

It is ordered: That the Canadian Pacific Railway Company be, and it is hereby, directed to appoint a station agent at Sylvan Lake, in the province of Alberta, by the 1st day of July, 1920: Provided that if at that time the business at the point in question does not justify the appointment of an agent, leave is hereby reserved the railway company to apply to the Board to rescind this order.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 29120.

In the matter of the application of residents in the vicinity of Benalto Station in the province of Alberta, for an order requiring the Canadian Pacific Railway Company to provide a station agent at that point.

File No. 4205.234.

TUESDAY, the 9th day of December, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Calgary, November 27, 1919, the applicants and the railway company being represented at the hearing, and what was alleged,—

It is ordered: That the Canadian Pacific Railway Company be, and it is hereby, required to appoint a station agent at Benalto station, in the province of Alberta, by the 1st day of July, 1920: Provided that, at that time, should the business at the point in question not justify the appointment of an agent, leave is hereby reserved the railway company to apply for a rescission of this order.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 29121.

In the matter of the application of the Board of Trade of Eckville, in the province of Alberta, hereinafter called the "applicant," for an order directing the Canadian Pacific Railway Company to appoint a freight and express agent at Kootuk station, Alberta.

File No. 4205.249.

TUESDAY, the 9th day of December, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Calgary, November 27, 1919, the applicants and the railway company being represented at the hearing, and what was alleged,—

It is ordered: That the Canadian Pacific Railway Company be, and it is hereby, directed to appoint a station agent at Kootuk station, in the province of Alberta, by the 1st day of July, 1920: Provided that if at that time the business of the point in question does not justify the appointment of an agent, leave be, and it is hereby, reserved to the railway company to apply to the Board to rescind this order.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 29138.

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "applicant company," in pursuance of the General Order of the Board No. 119, dated January 31, 1914, for authority to remove the station agent at Phoenix, British Columbia, and to discontinue the train service.

File No. 4205.235.

TUESDAY, the 9th day of December, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Vancouver, November 21, 1919, in the presence of counsel for the applicant company, and what was alleged,—

It is ordered: That, subject to the condition that the said station is to be reopened and the train service continued at any time upon the request of the Board, should traffic conditions, in its opinion, so warrant, leave is hereby granted the applicant company to close the station at Phoenix, in the province of British Columbia, and to discontinue the train service.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 29137.

In the matter of the application of the Grand Trunk Pacific Railway Company for an order extending the time within which it was directed, by Order No. 28680, dated August 20, 1919, to complete and put in operation, on or before December 31, 1919, the station in the townsite of Prince George, in the province of British Columbia, required to be erected, maintained and operated by Order No. 22995, dated November 23, 1914.

File No. 21418.

WEDNESDAY, the 10th day of December, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Regina, Saskatchewan, December 1, 1919, in the presence of counsel for the railway company, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 29132.

In the matter of the Canadian Pacific Railway Company's proposed tariff of class freight rates between stations west of North Bay to Mackenzie and Sault Ste. Marie, Ont., and stations in Canada east of North Bay, on the Canadian Pacific Railway and connecting railways.

File No. 28913.

THURSDAY, the 11th day of December, A.D. 1919.

S. J. McLEAN, *Assistant Chief Commissioner.*A. S. GOODEVE, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon its appearing impracticable to indicate the rate changes by symbols, as required by the order of the Board No. 16900, dated June 27, 1912,—

It is ordered: That the Canadian Pacific Railway Company be, and it is hereby, relieved from complying with the requirements of the said Order No. 16900.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 29110.

In the matter of the complaint of the Executive Boards of the Western Live Stock Shippers' Association and the Winnipeg Live Stock Exchange against the cancellation by the Canadian Pacific, Canadian Northern, and Grand Trunk Pacific Railway Companies of all free return transportation for live stock shippers west of Port Arthur, to take effect February 1, 1916; and the Order of the Board No. 24673, dated January 22, 1916, suspending such tariffs of the said railway companies.

File No. 26659.

FRIDAY, the 12th day of December, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*J. G. RUTHERFORD, C.M.G., *Commissioner.*

In pursuance of the provisions of sections 45, 345, and 347 of the Railway Act, 1919,—

It is ordered: That the said Order No. 24673, dated January 22, 1916, suspending the tariffs therein specified, be, and it is hereby, rescinded; this order to come into force January 1, 1920.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 29145.

In the matter of the application of the Grand River Railway Company, hereinafter called the "applicant company," for authority to file tariffs providing for a general advance in the tolls for the carriage of passengers over its line, in the same manner and to the same extent as has been permitted by the Board in the case of steam railways.

File No. 29598.

FRIDAY, the 12th day of December, A.D. 1919.

S. J. McLEAN, *Assistant Chief Commissioner.*A. S. GOODEVE, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, —

It is ordered: That the applicant company be, and it is hereby, authorized to increase its standard maximum fare for the carriage of passengers over its line of railway to 2.875 cents a mile; such increased fare not to become effective until the applicant company has complied with the requirements of section 334 of the Railway Act, 1919.

S. J. McLEAN,
Assistant Chief Commissioner.

GENERAL ORDER NO. 275.

In the matter of indicating changes in tolls in freight, passenger, express, telephone, and telegraph schedules.

File No. 19907.

TUESDAY, the 16th day of December, A.D. 1919.

Hon. W. B. NANTTEL, K.C., *Deputy Chief Commissioner.*A. S. GOODEVE, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon its appearing to the Board that comparison of freight, passenger, express, telephone and telegraph schedules, with those which they supersede or amend, should be facilitated; and in pursuance of the powers conferred upon the Board by section 324 of the Railway Act, 1919; and upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That all freight, passenger, express, telephone and telegraph tariffs, and supplements thereto, applying between points in Canada, or from a point in Canada to a foreign country, hereafter filed with the Board, shall, except as hereinafter provided, indicate advances thereby made by the symbol "A" and reductions by the symbol "R," with the necessary explanatory note, in the following manner, namely:—

1. In schedules which show the rates opposite the stations: The proper symbol to be shown against each rate, or each rule or regulation, changed.
2. In schedules in which the rates appear in a table separated from the station list:—

(a) Unless the station groupings have been varied relatively to their rates; the proper symbol to be shown in the rate table in the manner prescribed in section 1 hereof;

(b) If the station groupings have been varied relatively to their rates; the proper symbol to be shown against the reference on the station page to the rate table and against each rule or regulation changed.

Provided that if it is found impracticable in a certain case to indicate changes by either of the methods herein prescribed, application may be made to the Board, accompanied by a printer's proof of the proposed schedule, for relief from the provisions of this Order in such case.

And it is also ordered: That the character of the schedule be shown at the top of the title page, thus:—

“Advance.”

“Reissue.”

“Reduction.”

“New Rate or (Rates).”

and so on, as the case may be.

And it is further ordered: That the Order of the Board No. 16900, dated the 27th day of June, 1912, be, and the same is hereby, rescinded.

W. B. NANTEL,

Deputy Chief Commissioner.

ORDER No. 29152.

In the matter of the application of the Canadian Northern Western Railway Company, hereinafter called the “applicant company,” under section 276 of the Railway Act, 1919, for authority to carry traffic, temporarily, over its Hanna-Medicine Hat Branch, from Bonar, on the Hanna Subdivision of the Canadian Northern Railway, from mileage 256.9 from Saskatoon, to mileage 47.

File No. 28597.23.

WEDNESDAY, the 17th day of December, A.D. 1919.

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of the Chief Engineer of the Board, and reading what is filed on behalf of the applicant company,—

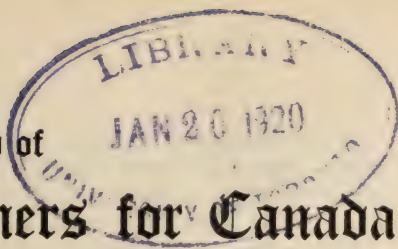
It is ordered: That the order of the Board No. 29023, dated November 15, 1919, authorizing the applicant company, for a period of four months from the date of the order, to carry freight traffic over the said branch, be, and it is hereby, amended by striking out the word “freight” after the word “carry” and before the word “traffic” in the third line of the operative part of the order.

A. C. BOYCE,

Commissioner.



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Railway Commissioners for Canada

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Application of the council of the village of Edam, Sask., per Victor E. Mowbray, for a crossing over the line of the C.N.R. at a point leading from the southeast corner of the townsite to the $\frac{1}{2}$ pits on the road allowance running north and south between sections 31 and 32-48-19, half a mile west of the village of Edam.

File 11929.20.

JUDGMENT.

Mr. COMMISSIONER GOODEVE:

The principle involved in this application is the same as in the applications on files 13272.13, 19221.170, and 9189.38 attached hereto.

I have read Mr. Blair's memorandum of August 27 last, addressed to the Chief Commissioner, on file 9189.38, which, I think, sets out clearly what is involved in these applications. As pointed out in that memorandum the interests of the Canadian Northern Town Properties Co., Limited, or as on the other files, Mackenzie, Mann & Co., Limited, are closely identified with those of the Canadian Northern Railway.

As a condition precedent to the registration of these townsites, the provinces I think very properly required that provisions should be made by the townsite companies for the connecting of the streets of the townsite subdivisions with the road allowances of the district. In order to get connection with these road allowances it was found, in some cases, necessary to cross the tracks of the railway company.

The townsite companies realizing that it was in their interest to have their plans registered in order that they might have title to their property, in some cases made application for these crossings. In the particular case of the village of Edam, with which I am dealing, application has been made on behalf of the village of Edam by the secretary of the Grain Growers' Association. In all four cases the townsite companies have admitted their liability for the cost of the construction of the crossings; but have argued that the cost of maintenance of the same should be borne by the municipalities, as when constructed they would inure to the use and benefit of the residents of the municipality.

While to some extent this is true, on the other hand it must be borne in mind that the intention of the province in making its regulations requiring the townsite companies interested to make provision for connection with the roads in the district was with the object of protecting its incoming settlers and the purchasers of these townsite properties; therefore, to place the cost of the maintenance of these crossings upon the municipality would be, to a certain extent, putting a lien upon the property and relieving the townsite companies of a cost that, I think, the regulations of the province above referred to, was intended should be borne by them.

A difficulty arises here, however, as pointed out in the judgment of the ex-Chief Commissioner Sir Henry Drayton on file 9189.38, "an Order against the townsite company might well amount to nothing, as after the property had been sold and paid for the company ceases to exist, and there would be no practical way to enforce it."

My opinion is that in view of the very close connection of interests between the railway company and these townsite companies, and the fact that the building up of these municipalities is in the interest of the railway company in that they tend to develop traffic, that the costs of the construction of the crossing should be placed upon the townsite companies; and the cost of operation and maintenance upon the railway company.

I do not want to be understood as stating as a general principle that because of traffic that might inure to the benefit of a railway company upon the development of a townsite, therefore the cost of maintenance and operation of all railway crossings in connection therewith should be borne by the railway company affected, but that in the particular cases under review, owing to the peculiar relationship between the railway company and the townsite companies, it is a factor that should be considered.

OTTAWA, December 17, 1919.

The Chief Commissioner, the Assistant Chief Commissioner and Commissioners Boyce and Rutherford concurred.

ORDER No. 29219.

In the matter of the application of the village of Edam, in the province of Saskatchewan, hereinafter called the "applicant," under section 256 of the Railway Act, 1919, for an order directing the Canadian National Railways to construct a crossing over the railway one-half mile east of Edam.

File No. 11929.20.

WEDNESDAY, the 31st day of December, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the railway company; and upon the report and recommendation of the Assistant Chief Engineer of the Board,—

It is ordered: That the Canadian National Railways be, and they are hereby, authorized to construct a highway crossing over their tracks at a point leading from the southeast corner of the townsite to Quarter pits on the road allowance running north and south, between sections 31 and 32, township 48, range 19, west of the 3rd meridian, one-half mile east of the village of Edam; the said crossing to be constructed in accordance with the "Standard Regulations of the Board Affecting Highway Crossings" as amended May 4, 1910; the cost of construction to be borne and paid by the Canadian Northern Town Properties, Limited, and the cost of maintenance and operation by the railway company.

F. B. CARVELL,
Chief Commissioner.

Re Express charges Virden to Cromer via Canadian National Express.

File No. 29040.24.

On the 13th of December, 1919, the Board received the following letter from the United Grain Growers, Limited, eastern division, Winnipeg, Man.:—

“Under date of November 4 we made a shipment of 251 boxes of apples, weight 12,550 pounds, Virden to Cromer, via Canadian National Express. They exacted express charges on basis of 55 cents per 100 pounds, which is full-tariff rate.

“We are given to understand that the railway companies will not allow us a refund of 15 cents per 100 pounds, owing to their maintaining a delivery service at this point, but did not handle this shipment from our elevator to the depot. We are also given to understand that a very recent case of this nature was dealt with by your Commission.

“Would you kindly advise status of the Commission ruling on this subject.”

The ruling of the Board was communicated to the complainants by letter, dated December 19, as follows:—

RULING.

Referring to your letter of the 10th instant, I am directed to state that a somewhat similar situation was dealt with in the case of the Neal Baking Company of London, Ont., which was advised as follows:—

“Referring to your letter of the 30th ultimo to the Chief Commissioner, I am directed to say that the judgment recites, *inter alia*: ‘There are many points, hundreds of them, where there is no wagon service and where the cost of maintaining a wagon service would be entirely disproportionate to the total receipts. Nevertheless these points pay just the same rates as do points where a wagon service exists,’ and then goes on to provide as to the reductions to be made. Your correspondence raises the contention that where at a cartage point the shipper or consignee performs a wagon service after cartage hours there should be a similar reduction in respect of the shipper or consignee. The intention of the judgment is that the reduction should be limited to points where there is no cartage service of any kind whatever performed by the express companies.”

I am further directed to say that the rates have been checked. The first-class rate between the Virden and Cromer blocks is 85 cents. Cromer is not a cartage point. In accordance with the judgment, there is deducted from the 100-pound rate the sum of 15 cents, making the net first-class rate 70 cents. The charge for the box of apples graduated on the first-class rate of 70 cents gives a rate of 55 cents, as charged. Virden is a cartage point. In terms of the letter above quoted the reduction of 15 cents as referred to applies only at points where there is no cartage service of any kind. Where the express company maintains a cartage service, which the shipper does not see fit to take advantage of, this does not justify the reduction asked for.

Yours truly,

R. RICHARDSON,
Assistant Secretary.

Complaint of the Broadview Ratepayers Association of Burnaby re fares on the Burnaby Lake line of the British Columbia Electric Railway, as relating to the Broadview district.

File No. 21404.5.

JUDGMENT.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

At the sittings of the Board in Vancouver on November 22, 1919, complaint was made of the rates, particularly those affecting Horne Payne and Crown Avenue stations. As expressed by Mr. Collier, one of the parties applicant:—

“This has been argued before by the solicitor for the municipality, but the ratepayers’ association instructed me to come and make a formal protest before this Board as to what we consider an exorbitant increase that was granted the company on this line last June. Previous to that we had a fifty-cent rate ticket in existence. I will mention Horne Payne and Crown Avenue stations. At Horne Payne the rate was 5 cents a ride, Crown Avenue 6 cents, buying a book costing \$3. The new rate to Horne Payne is 7 cents, an increase of 2 cents; the new rate to Crown Avenue is 9 cents, an increase of 50 per cent, which we consider is exorbitant. The company in their statement listed the old rate on the basis of a ten-ride ticket, which in the case of Crown Avenue would read $7\frac{1}{2}$ or 75 cents for a ten-ride ticket. So far as we were concerned, using that station, the ten-ride ticket was practically non-existent, so that to us the old rate was 6 cents and the new rate is 9 cents.”

The stopping-points particularly referred to are located on the Burnaby Lake line of the British Columbia Electric Railway. The Burnaby Lake line, in terms of its charter, is the Vancouver, Fraser Valley and Southern.

The application of the British Columbia Electric Railway Company for increases in passenger rates on the line in question was dealt with by the Board in its judgment of November 14, 1918.

In the increases for which sanction was asked were certain commutation rates. The rates herein involved fall in this class. The following detail sets out the former rate and the rate for which sanction was asked.

COMMUTATION RATES.

Vancouver, Fraser Valley and Southern Railway Company.

Between and	Vancouver			New Westminster		
	10-ride-adult.			10-ride-adult.		
	Miles.	Old rate.	New rate.	Miles.	Old rate.	New rate
Horne Payne	4.9	\$0.50	\$0.70	9.8	\$1.25	\$1.50
Crown Avenue	5.5	0.75	0.90	9.2	1.25	1.50

The figures as to earnings and expenses were carefully analyzed at the time, and the conclusion was unescapable that the various increases involved were justified; and, accordingly, a sanction which covered the rates herein complained of was given.

At the hearing in Vancouver, additional information as to this condition of the line was submitted by the railway.

Intimation was given at the hearing by the Chief Commissioner that on the showing made it was improbable that the line could carry on on lower rates.

While it cannot be said that there was much, if anything, new in the way of evidence as showing that a lower rate basis was justifiable at the present on the line in question, the urgent submissions as to the effect of the rate increases has caused the matter to stand for further consideration. Further consideration, however, in view of the fact that no change for the better in the condition of the line in question has been shown as compared with the date when the original judgment was given simply emphasizes the fact that the increases allowed are still justifiable.

December 23, 1919.

The Chief Commissioner and Commissioner Rutherford concurred.

Application of Mr. J. H. Giroux of Trois Rivières, Que., re demurrage charges.

File 1700-276.

The application is set out in the following letter dated December 4, 1919, received from Messrs. Bureau & Biqué, Advocates:—

“We are acting for Mr. J. H. Giroux of this city and owner of a lime quarry which is situated a short distance from this city but some four (4) miles from the nearest station on the St. Maurice Valley Railway running from here to Shawinigan Falls.

“Under regulations ratified by your Board, demurrage is charged after three (3) days without unloading. As the pit of this quarry is some four (4) miles from the station and the roads are none too good, especially in winter and spring-time, it is almost an impossibility to unload a car of coal in three (3) days. Mr. Giroux would want five (5) days without demurrage.

“Under the circumstances, his request seems fair; as his industry is young but very important for the district, it seems that no undue expense should be added to his cost of production.

“The St. Maurice Valley Railway is operated by the Canadian Pacific Railway Company.

“Would you kindly tell us when it would be possible to have this point adjudicated upon by your Board.”

Ruling of the Board.

The condition of the highway over which haulage of the coal was to be made, and which is referred to as a reason for extension of the free time, is a disability for which the railway is in no way responsible. The free time for unloading as fixed by the Board in the Demurrage Rules is of general application, and covers what, after careful consideration, is regarded as a maximum reasonable term for unloading. In other cases where road disabilities or lack of facilities on behalf of the applicant has been advanced as a reason for additional free time, the Board has not felt itself justified in granting additional free time. It does not feel justified in granting that an extension should be made in the present instance.

Dated at Ottawa,

December 24, 1919.

Application of the Harvest Company, Limited, Hamilton, Ont., in the matter of liability in connection with restricted clearance.

File 1750.18.46.

The fourth paragraph of the draft agreement submitted to the Board provides as follows:—

“And whereas the railway company requires the contractor to indemnify the railway company against any and all loss, damage or injury which may happen or occur to the servants and property of the contractor and (or) railway company in the course of the operations over the portion of the siding where such insufficient clearance exists, and to assume all risk of accident, loss, damage, and injury in connection therewith.”

RULING.

The ruling of the Board is set out in the Assistant Chief Commissioner's memorandum, dated January 5, 1920, as follows:—

“In the matter of an application of the Robin Hood Mills, Limited, Moosejaw, which was heard by the Board on July 8, 1919, and which involved the question of liability in connection with the matter of reduced clearances, the position taken by the Canadian Pacific Railway Company, the railway involved, was it wanted an indemnity against all claims for damages which might occur in connection with the operation of the spurs involved; that is to say, an indemnity was desired against any damages the company might have to pay by reason of the fact that it was operating without a proper clearance. This having been explained to the Board, the parties were left to work out an agreement on the basis of this understanding.”

ORDER No. 29160.

In the matter of the Order of the Board No. 22855, dated November 12, 1914, directing inter alia, that 10 per cent of the cost of the separation of grades at Avenue Road, North Toronto, be borne and paid by the Toronto Street Railway Company.

File No. 12021.70.

FRIDAY, the 12th day of December, A.D. 1919.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Objection having been taken on behalf of the Toronto Street Railway Company to the inclusion of interest in the itemized statement showing particulars of the cost of grade separation at the said crossing, rendered by the Canadian Pacific Railway Company, as well as objection to the payment of land damages, pending negotiation and settlement between the city and the railway companies in respect of such damages;

Upon reading what is alleged in support of such objections and on behalf of the Canadian Pacific Railway Company, and the report of the Chief Engineer of the Board,—

It is ordered: That the Toronto Street Railway Company pay to the Canadian Pacific Railway Company the sum of thirteen thousand eight hundred and seven

dollars and one cent (\$13,807.01), with interest thereon at the rate of 5 per cent per annum from October 15, 1919, to date of payment.

And it is further ordered: That the items shown in the said account under the head "Land and Damages," stand for settlement between the parties, or, in the event of their failure to agree, for further Order of the Board.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 29161.

In the matter of the Application of O'Reilly & Belanger, Limited, hereinafter called the "applicants" for an Order, under sections 312, 316, 317, 319, and 320 of the Railway Act, directing the Grand Trunk Railway Company to provide reasonable and proper facilities for the unloading, handling, storing, and delivery of the applicants' coal at the coal trestle erected upon the lands of the said railway company in its station yards at Isabella street, Ottawa; and for a mandatory Order directing the said railway company forthwith to terminate a certain agreement, or lease, in respect to the said coal trestle, bearing date the 25th October, 1916, made between the said railway company and the Coal Trestle Company, Limited.

File No. 29741.

WEDNESDAY, the 17th day of December, A.D. 1919.

Hon. W. B. NANTEL, K.C., *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, December 2, 1919, in the presence of counsel for the applicants and the railway company, and what was alleged,—

It is Ordered: That the application be, and it is hereby, refused.

W. B. NANTEL,
Deputy Chief Commissioner.

ORDER No. 29167.

In the matter of the application of the Lake Lumber Company, Limited, The J. C. Wilson Lumber Company, and merchants of Qualicum Beach, in the province of British Columbia, for an Order directing the Esquimalt & Nanaimo Railway Company (Canadian Pacific Railway Company) to provide a station agent at Qualicum Beach:

File No. 4205-236.

THURSDAY, the 18th day of December, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

Upon hearing the application at the sittings of the Board held in Victoria, November 24, 1919, the applicants and the railway company being represented at the hearing, and what was alleged,—

It is Ordered: That the Esquimalt & Nanaimo Railway Company be, and it is hereby, directed to appoint a station agent at Qualicum Beach, in the province of British Columbia, by the 1st day of February, 1920.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 29168.

In the matter of the application of the Dominion Express Company, hereinafter called the "applicant company," for an Order relieving it from providing a cartage service at Courtright, Ontario:

File No. 4214-647.

THURSDAY, the 18th day of December, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Chief Traffic Officer of the Board, the municipality of Courtright consenting,—

It is Ordered: That the applicant company be, and it is hereby, relieved from providing a cartage service at Courtright, in the province of Ontario.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 29163.

In the matter of the complaint of the York Sand and Gravel Company, Toronto, hereinafter called the "complainant," against the rates on sand and gravel from York to private sidings and team tracks on the Grand Trunk Railway in and contiguous to the city of Toronto.

File No. 23605.

MONDAY, the 22nd day of December, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the complaint at the sitting of the Board held in Toronto, October 31, 1919, the complainant, the Canadian Manufacturers' Association, the Toronto Board of Trade, and the Grand Trunk Railway Company being represented at the hearing, and what was alleged; and upon reading the further submissions filed, and the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the Grand Trunk Railway Company be, and it is hereby, directed to publish and file a tariff, which may be made effective January 1, 1920, show-

ing the following rates on sand and gravel, in carload, from York, in the province of Ontario, namely:—

	Cents per 100 pounds.
1. East of Church street to Coxwell avenue and Don Valley. . . .	2 $\frac{3}{4}$
2. Church street to South Parkdale and Dundas Street bridges..	3
3. West of South Parkdale to Swansea, west of Dundas Street bridges to West Toronto	3 $\frac{1}{2}$
4. North of Dundas Street bridges to Davenport	3 $\frac{1}{2}$
5. Mimico, New Toronto and Belt Line beyond Davenport to Davisville (Merton street)	3 $\frac{3}{4}$

2. That the minimum weight be the marked capacity of the car; except that when cars fully loaded will not contain the marked capacity, the minimum shall be the actual weight, but not less than 60,000 pounds.

3. That the rate to New Toronto be exclusive of delivery on manufacturer's siding at that point.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 29194.

In the matter of the application of the Canadian Northern Railway Company, hereinafter called the "applicant company" under section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic (temporarily) that portion of its Oliver branch from Oliver to mileage 98.5.

File No. 27930.20.

FRIDAY, the 26th day of December, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by it Chief Engineer, and the filing of the necessary affidavit,—

It is ordered: That the applicant company be, and it is hereby authorized to open for the carriage of traffic its Oliver branch from Oliver to mileage 98.5; provided that the speed of trains operated on the said line from Oliver to mileage 36 shall not exceed fifteen miles an hour; from mileage 36 to mileage 90, twenty-five miles an hour; and from mileage 90 to mileage 98.5, fifteen miles an hour.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 29202.

In the matter of the application of the Fredericton & Grand Lake Coal and Railway Company, under section 323 of the Railway Act, 1919, for approval of a by-law, passed on the 7th day of October, 1919, authorizing the Passenger Traffic Manager and the Assistant Freight Traffic Manager of the Company to prepare and issue tariffs of the tolls to be charged for the carriage of passengers and freight traffic on its line of railway.

File No. 29866.

SATURDAY, the 27th day of December, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

It is Ordered: That the said by-law be, and it is hereby, approved.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 29217.

In the matter of the application of the Canadian Pacific Railway Company for an order rescinding the Order of the Board No. 28630, dated August 8, 1919, disallowing the said company's Tariff, C.R.C. No. E-3369 in so far as it provided for a cartage allowance of 1¼ cents per 100 pounds to the Canada Sugar Refining Company, Limited, Montreal, in lieu of interswitching by the Grand Trunk Railway Company.

File No. 6713.165.

SATURDAY, the 27th day of December, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

It appearing that the Grand Trunk Railway distance from the refinery of the Canada Sugar Refining Company, Limited, to the point of interchange with the Canadian Pacific Railway at Jacques Cartier Junction exceeds the interswitching limitation of four miles, as defined in the General Order of the Board No. 252, and that, therefore, the movement over the Grand Trunk Railway is not regulated by the provisions of section 15 of the said General Order No. 252; and upon reading what is filed on behalf of the railway company, and the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the said Order No. 28630, dated August 8, 1919, be, and it is hereby, rescinded.

F. B. CARVELL,
Chief Commissioner.

GENERAL ORDER No. 277.

In the matter of indicating changes in tolls in freight, passenger, express, telephone, and telegraph schedules.

File No. 19907.

MONDAY, the 29th day of December, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

In pursuance of the powers conferred upon the Board by Section 324 of the Railway Act, 1919; and upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is Ordered: That freight, passenger, express, telephone, and telegraph tariffs, and supplements thereto, applying between points in Canada, or from a point in Canada to a foreign country, hereafter filed with the Board, shall, except as hereinafter provided, indicate advances thereby made by the symbol “A” and reductions by the symbol “R,” with the necessary explanatory note, in the following manner, namely:—

1. In schedules which show the rates opposite the stations:—The proper symbol to be shown against each rate, or each rule or regulation, changed.

2. In schedules in which the rates appear in a table separated from the station list:—

(a) Unless the station groupings have been varied relatively to their rates; the proper symbol to be shown in the rate table in the manner prescribed in Section 1 hereof;

(b) If the station groupings have been varied relatively to their rates; the proper symbol to be shown against the reference on the station page to the rate table, and against each rule or regulation changed.

Provided that if the columns of rates are so close together as to leave insufficient space for the symbols, and in such cases only, increases shall be printed in full-face type, and reductions in italics, with the necessary explanatory note.

Provided, also, that if it is found impracticable to indicate changes in a schedule by either of the methods herein prescribed, application may be made to the Board, accompanied by a printer's proof of the proposed schedule, for relief from the provisions of this Order in such case.

And it is also Ordered: That the character of the schedule be shown at the top of the title page, thus:—

“Advance”
“Reduction”

“Reissue”
“New Rate (or Rates)”

and so on, as the case may be.

And it is further Ordered: That the General Order of the Board No. 275, dated the 16th day of December, 1919, be, and the same is hereby, rescinded.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 29192.

In the matter of the application of the Grand River Railway Company, hereinafter called the "applicant company," under section 334 of the Railway Act, 1919, for approval of its Standard Passenger Tariff C.R.C. No. 14.

File No. 29598.

TUESDAY, the 30th day of December, A.D. 1919.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

The said Standard Passenger Tariff having been filed on the basis permitted by the Order of the Board No. 29145, dated December 12, 1919,—

It is ordered: That the applicant company's said Standard Passenger Tariff C.R.C. No. 14, to become effective January 12, 1920, be, and the same is hereby, approved; the said tariff, together with reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

F. B. CARVELL,
Chief Commissioner.

GENERAL ORDER No. 276.

In the matter of Order in Council P.C. 1863, as amended, and of all tolls now in effect by tariffs lawfully published and filed:

File No. 28678.

WEDNESDAY, the 31st day of December, A.D. 1919.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

In pursuance of the powers conferred upon the Board by Section 325 of the Railway Act, 1919,—

It is ordered: That, subject to the provisions of the Railway Act, 1919, the tolls of the railway companies subject to the jurisdiction of the Board, in effect as of this date, are hereby continued in effect, on and from January first, A.D. 1920.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 29208.

In the matter of the application of the Canadian Pacific Railway Company as lessee exercising the franchises of the New Brunswick Coal and Railway Company, under section 323 of the Railway Act, 1919, for approval of the Order in Council of the Government of the province of New Brunswick, passed December 9, 1919, authorizing the Passenger Traffic Manager and the Assistant Freight Traffic Manager of the New Brunswick Coal and Railway Company from time to time to prepare and issue tariffs of the tolls to be charged for the carriage of passenger and freight traffic on the said railway or any portion thereof.

File No. 29867.

WEDNESDAY, the 31st day of December, A.D. 1919.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading the Order in Council, and its appearing that the intention is to authorize the officials named therein to prepare and issue tariffs of the tolls to be charged in respect of the railway owned by it and operated by the Canadian Pacific Railway Company,—

It is ordered: That the said Order in Council, on file with the Board under file No. 29867, be, and it is hereby, approved.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 29218.

In the matter of the application of the Canadian Northern Town Properties Company, Limited, hereinafter called the "applicant company," under section 256 of the Railway Act, 1919, for authority to construct a highway crossing over the Canadian Northern Railway in the southeast quarter of section 4, in township 29, range 7, west of the 4th meridian, in the province of Alberta, as shown on the plan and profile dated Winnipeg, August 23, 1916, on file with the Board under file No. 9189.38.

FRIDAY, the 2nd day of January, A.D. 1920.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the Department of Public Works for the Government of the province of Alberta,—

It is ordered: That the applicant company be, and it is hereby, authorized to construct a highway crossing over the Canadian Northern Railway, in the southeast quarter of section 4, township 29, range 7, west of the 4th meridian, in the province of

Alberta, as shown on the said plan and profile on file with the Board under file No. 9189.38; the said crossing to be constructed in accordance with the "Standard Regulations of the Board Affecting Highway Crossings," as amended May 4, 1910, at the expense of the applicant company; the cost of operation and maintenance to be borne and paid by the Canadian Northern Railway Company.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 29224.

In the matter of the application of the Grand Trunk Pacific Railway Company, hereinafter called the "applicant company," under the provisions of the General Order of the Board No. 119, dated January 31, 1914, for authority to remove its station agent at Entwistle, in the province of Alberta.

File No. 10580.

FRIDAY, the 2nd day of January, A.D. 1920.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
A. S. GOODEVE, *Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon reading what is filed in support of the application and on behalf of residents of the village of Entwistle,—

It is ordered: That the application be, and it is hereby, refused, with leave to the applicant company to renew its application for leave to discontinue the station agent at Entwistle, Alta., at the expiration of six months from the date of this order.

F. B. CARVELL,
Chief Commissioner.

GENERAL ORDER No. 278.

In the matter of section 360 of the Railway Act, 1919, and the tariffs of express companies.

File No. 4214.648.

SATURDAY, the 3rd day of January, A.D., 1920.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
A. S. GOODEVE, *Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
J. G. RUTHERFORD, C.M.G., *Commissioner.*

It is ordered: That, subject to such Order or Orders as the Board may from time to time issue, all express companies within the legislative authority of the Parliament of Canada be, and they are hereby, authorized to charge the express tolls published in their respective tariffs filed with the Board.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 29231.

In the matter of the complaints of Riordon Sales Company, Limited, the Ha' Ha' Bay Sulphite Company, and the Canadian Export Paper Company, Limited, of the city of Montreal; Grace & Company, Limited, the Meishosha Company, Limited, and Jardine, Matheson & Company, Limited, of the city of New York; and Caldwell & Company, on behalf of Federal Export Corporation, International Trading Corporation, Limited, Mitsubishi Goshi Kaisha, Frazar & Company, Takata & Company, Okura & Company, Limited, Mitsui & Company, Limited, A. D. de Shubirin & Company, American Trading Company, Pacific Commercial Company, Andersen Meyer & Company, Limited, China, Japan and South American Trading Company, Limited, A. G. Kidston & Company, Suzuki & Company, and Iwai & Company, Limited, of the city of New York, against the withdrawal of export rates to the ports of Seattle and Tacoma, in the State of Washington, by Tariff C.R.C. No. 43 of the Canadian Freight Association, published to become effective the 15th day of January, 1920.

File No. 26901.20.

Friday, the 9th day of January, 1920.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*Hon. W. B. NANTEL, K.C., *Deputy Chief Commissioner.*A. S. GOODEVE, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the complaints at the sittings of the Board held in Ottawa on the 7th day of January, 1920, the complainants and the Canadian Freight Association being represented at the hearing, and what was alleged,—

It is ordered: That the Canadian Freight Association be, and it is hereby, required, not later than the 15th day of January, 1920, to reinstate the rates to the ports of Seattle and Tacoma in its tariff on freight for export to trans-Pacific destinations.

F. B. CARVELL,

Chief Commissioner.

GENERAL ORDER No. 279.

In the matter of the complaint of the Vinemount Orchard Company, of Vinemount, in the province of Ontario, against the rate on fresh fruits to Winnipeg, in the province of Manitoba, as shown in the Canadian Freight Association's Special Commodity Tariff C.R.C. No. 19, effective August 20, 1918.

File No. 26848.1.

MONDAY, the 5th day of January, A.D. 1920.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*Hon. W. B. NANTEL, K.C., *Deputy Chief Commissioner.*A. S. GOODEVE, *Commissioner.*J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the submissions of the Freight Traffic Manager of the Canadian Pacific Railway Company, on behalf of the railway companies interested herein, at the sittings of the Board held in Ottawa on the 16th day of September, 1919, the Canadian Pacific and Grand Trunk Railway Companies, the Canadian National Rail-

ways, the Canadian Freight Association, and the Fruit Branch of the Dominion Department of Agriculture being represented at the hearing, and what was alleged; and upon the report of the Chief Traffic Officer of the Board, and reading the written submissions subsequently filed on behalf of the Fruit Commissioner of the said department; and it appearing that the said tariff contravenes the Order of the Board dated October 10, 1904, in the complaint of the Ontario Fruit Growers' Association, and the Order of the Board No. 8207, dated September 27, 1909, dismissing the application of the Canadian Freight Association for an order rescinding the said order of October 10, 1904,—

It is ordered: That the Canadian Freight Association's Tariff C.R.C. No. 19, effective August 20, 1918, be, and it is hereby, disallowed.

And it is further ordered: That the Canadian Freight Association, in virtue of the authority thereupon conferred by powers of attorney of the railway companies interested herein, forthwith publish and file a tariff restoring the rates on fresh fruits from points in Ontario and Quebec to Winnipeg, Portage la Prairie, and Brandon, in the province of Manitoba, prescribed in the said Order of the Board dated October 10, 1904, as increased by authority of the Order of the Board No. 212, dated January 15, 1918, and as further increased by Order in Council No. P.C. 1863, dated July 27, 1918; the said increases having been continued in effect by the General Order of the Board No. 276, dated December 31, 1919.

F. B. CARVELL,
Chief Commissioner.

CIRCULAR No 186.

Rules for wires erected along or across railways.

Case 4704.

JANUARY 5, 1920.

Referring to Circular No. 167, dated June 19, 1918, to the effect that under the provisions of the old Act and the amendment of 1911, Section 7, c. 22, General Order No. 231, dated May 6, 1918, and the rules thereby adopted and confirmed, applied only to construction across a railway.

Section 372 of the Railway Act, 1919, is not so limited and applies to construction *along* as well as *across* a railway.

Where, therefore, the construction, whether along or across the railway, is by consent and in accordance with the Standard Conditions and Specifications set out in the schedule to General Order No. 231, and approved by that Order, no further leave of the Board is necessary.

Yours truly,
A. D. CARTWRIGHT,
Secretary.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. IX

Ottawa, February 1, 1920

No. 22

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Accident at the crossing one mile east of Brockville station, Ont. (North Augusta Road Crossing), where Reverend John Osborne, Miss Irene Weatherstone and Miss Flossie Headley were fatally injured, July 9, 1919, G.T.R.

File 26765.126.

REPORT OF COMMISSIONERS GOODEVE AND BOYCE TO THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA.

In accordance with the arrangements made, Mr. Commissioner Boyce and myself, accompanied by the Chief Engineer, went to Brockville on Tuesday, January 6, 1920, and made an inspection of this crossing.

As pointed out in the report of Inspector McCaul, the view of persons on the highway approaching this crossing from the north is practically unobstructed to west and eastbound trains for a distance of 1,000 to 1,600 feet. There is also a good view of eastbound trains for persons approaching the crossing on the highway from the south. There is, however, some obstruction to the view for westbound trains owing to the location of some ten or twelve acres of hardwood trees situated on the southeast corner. There are also a few scrub trees on the highway on the south side of the tracks.

We are of the opinion, however, that even when the trees referred to are in full foliage the obstructions would not be sufficient to justify the ordering of a bell at this crossing, as there is a fair view at a distance from the crossing of 50 to 150 feet.

We find that there was no railing on the approach to the north side of the tracks where there is a fill of some 12 or 15 feet.

We are of the opinion, therefore, that if the company be directed to remove these scrub trees and trim such of the other trees as may obstruct the view, and erect a railing in accordance with the "Standard Regulations of the Board Affecting Highway Crossings" on the north approach to the crossing to the limit of their right of way, that no further protection will be required in the meantime.

OTTAWA, January 8, 1920.

The Chief Commissioner concurred.

Complaint of the United Grain Growers, Limited, Winnipeg, that the Canadian National Railways have refused compensation for loss occasioned by delivery to the Thunder Bay Elevator instead of to Paterson's Elevator, as directed, car C.N.R. 44458, grain ex Deepdale, December 5, 1918, consigned to the United Grain Growers, Limited, Port Arthur, care C.N.R. Terminal Elevator.

File 29257.

JUDGMENT.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

After some correspondence had taken place between the applicant and the Board in the above matter, it was set down for hearing at the recent sittings of the Board in Winnipeg. By consent of the parties at said hearing, the matter was further developed in a written submission by the applicant.

The material points as set out in the submission of the applicant are as follows:—

"The particulars of this claim are as follows: Car C.N. 44458, ex Deepdale, December 5, was consigned to the United Grain Growers, Limited, Port Arthur, care of the C.N. Terminals, Port Arthur. When this car was inspected in Winnipeg on December 11, we wired our Fort William office to order the car to be placed at Paterson's elevator. Our Fort William office, on receipt of this telegram, 'phoned the C.N.R. Grain Office at 14.25 on December 11, and also confirmed same by letter that day, instructing the C.N.R. grain agent to place the car at Paterson's elevator. Instead of carrying out these instructions, the C.N.R. placed the car at Thunder Bay elevator on December 18, or seven days after our orders had been given for placing, causing a loss of 6 cents per bushel on 1,083 bushels, total \$64.98.

"The grain in this car belonged to a farmer and on account of the poor quality of the grain and the low price it had to be sold at, we naturally tried to get the best possible price that we could for him. We were acting as commission agents and any increase obtained by the selling of the grain would not benefit us in any way. We consider that if the railway company do not carry out instructions for placing cars they should be held responsible and pay for their mistakes, as it hardly seems fair that the farmer should be the one to suffer for the railway's negligence. This car could not have been shipped direct to Paterson's elevator at the time of shipping, as it was not possible to tell what grade the grain was until after it had been inspected at Winnipeg, which will explain why we cannot give orders at time of shipment which elevator it is to go to, nor can we tell which elevator will pay a premium until it has been graded at Winnipeg and a sample submitted to the elevator company.

"Section 8 of the Grain Bill of Lading, authorizing the railway company to deliver cars to any elevator where the grain can be placed with other grain of the same kind and grade, without respect to the ownership, does not hold good in this particular case, as this clause is only intended to apply when the elevator the grain is consigned or ordered to is unable to take it in. It cannot be construed as applying as an excuse for the railway company not following orders placed with them by the owner or his agent for switching any car to another elevator, providing such orders are delivered to the railway company in sufficient time to permit them to perform such switching service without causing undue strain on their facilities or a blockade of any kind in their yards. In this case, the railway company received the necessary switching instructions from us in ample time and through their error, caused by their own culpable negligence, delivered the grain otherwise than ordered by us.

"In our opinion the word 'diversion' is used in too broad a term by the railways as well as shippers, as it appears to be the opinion of the C.N.R. in this particular case that this car was diverted, while we consider that it does not come under the term of diversion but under the switching arrangement. We contend that the destination is the railway station that the car is billed to and if a car is diverted it must have the station billed to changed to another station. As you will note from copy of bulk grain bill of lading attached, the destination shown on cars of grain shipped by us is Port Arthur, and in the body of the bill appears the following: 'Care of Canadian Northern Terminals, Port Arthur.' Therefore, the name of the elevator is not the destination. Further than this, the bill of lading must be surrendered to the railway company when the destination of a car is changed, in order that the bill may be corrected in accordance with the instructions in the railway tariffs. This correction is made before the bill of lading is returned to the party surrendering same. In this particular case, the bill of lading was not surrendered to the railway company, and when cars of grain are ordered to any particular elevator the bill of lading is never surrendered, providing the orders for placing are given by the party to whom the car is consigned. No diversion charge is assessed if the car is ordered from one elevator to another, or if it is ordered to any particular elevator before it has already been placed for unloading. If, however, a car has been placed and it is then ordered switched to another elevator, there is a switching charge assessed, but in no case a diversion charge.

"In view of the above, we contend that the railway company is not justified in claiming that this case should be handled as a diversion, as, in our opinion, it should come under the switching arrangement and, therefore, we claim that the C.N.R. should reimburse the shipper for the loss he has been put to owing to their not carrying out our instructions in regard to placing the car at Paterson's elevator in order that we might obtain the best possible price for the grain. If the Board is not in a position to instruct the C.N.R. to refund us this money, we would ask them to give us their ruling as to whether or not this should come under the diversion or switching arrangement."

The position of the railway company had been developed in writing at an earlier date, and is again referred to by it as summarizing its position in letter of October 29, 1919, the material parts of which are as follows:—

"The car was receipted for and billed forward 'Care Canadian Northern Terminals, Port Arthur, Ont.' It appears, however, that it arrived at Port Arthur at a time when there was an accumulation of loaded cars on track waiting to be unloaded by the Port Arthur Elevator Company, otherwise known as 'Canadian Northern Terminals,' and in order to effect delivery of grain and reduce the number of loaded cars on track, we were delivering to whatever public terminal elevator could receive the grain. These deliveries were being made under section 8 of the conditions of the Bulk Grain Bill of Lading. It appears, however, that prior to the arrival of this car at Port Arthur, the Fort William agency of the United Grain Growers instructed our grain agent at Port Arthur to divert this car to Paterson's elevator; but in the rush of business, consequent on the heavy movement of grain during the fall and early winter months, the car was delivered to the Thunder Bay Elevator Company's plant, along with others which were being so delivered owing to the inability of the Canadian Northern Terminals to promptly unload grain consigned in their care.

"The car was delivered to the Thunder Bay elevator owing to the congestion in the Port Arthur elevator, under section 8 of the Bulk Grain Bill of Lading. Had the Thunder Bay elevator also been congested the car would have been delivered to any public elevator which was in a position to accept it.

"In accepting instructions to make diversions, we have always taken the position that we cannot assume any responsibility for failure to accomplish same. We are frequently requested to divert grain to some elevator at the Head of the Lakes, other than the one to which it was originally consigned. We cannot always succeed in making these diversions and we must refuse to assume responsibility for loss which the owners of the grain may claim to sustain by reason of their diversion instructions not being complied with.

"As a general rule, the consignor ships his grain upon the terms of the Bulk Grain Bill of Lading, which under clause 8 gives the right to deliver bulk grain at warehouses. This bulk grain bill of lading covers the whole arrangement of the company, but under certain circumstances the consignor after he has made arrangements with the railways seeks to change them to make other delivery points than those specified in the bill of lading and otherwise divert the grain. In changing his mind in this way and seeking to upset the previous arrangement, it is not sufficient that the consignor should simply give notice to the railway company. The railway company may not be able to find the car in question or to communicate with its proper officials in time to make the change suggested. Therefore, unless the railway company, at the time the diversion order is given, expressly agrees to effect the diversion, there can be no liability in the event of the diversion not being effected. If, instead of, as expressly agreed, the railway company accepts the diversion instructions, the railway takes the position that it cannot assume any responsibility for failure to accomplish the diversion, the consignor in such a case cannot claim against the railway company any loss or damages that he may be put to by reason of the failure of the railway to meet his change of plans.

"We distinctly repudiate any responsibility for failure to comply with any request for diversion whether this failure is due to inability to carry it out or error or any other cause."

Referring to the applicant's contentions, the following appear to be the points on which the contention turns:—

(1) It is alleged that the railway company did not carry out instructions for placing cars and that it should, therefore, be held responsible and pay for its mistakes, as it is unfair that the farmer should be the one to suffer for the railway's negligence.

(2) It is contended that section 8 of the Grain Bill of Lading is not a defence for the railway on the facts herein involved.

(3) It is alleged that the railway company received the necessary switching instructions in ample time, but through the railway's error caused by its own "culpable negligence" delivered the cars otherwise than ordered by the applicant.

(4) It is contended that instead of the movement concerned being a diversion it really came under the switching arrangements.

(5) Application is made that instruction be issued to the C.N.R. to refund the amount involved.

(6) It is stated that if the Board has no power to direct such a refund by the railway then it is asked that the Board should rule whether or not the matter should have been properly classed as a diversion or a switching arrangement.

The railway's statement, as already set out, puts in summary form its contentions as to legal obligations.

The Board has no power, under the Railway Act, to direct refunds. The application as presented is, in effect, one asking for a ruling that the railway has been negligent; that is to say, the Board is being asked to pass upon the liability of the railway. As has been often pointed out, the powers of the Board, while very general in their scope, must be dealt with as found within the four corners of the Railway Act. It is elementary that the Board cannot exercise a jurisdiction not to be found in the Railway Act. It has been pointed out in many rulings of the Board that no jurisdiction is given to deal with loss and damage claims. The practice in this respect has been

uniform throughout. The right to pass upon liability is of necessity fundamental to the determination of a loss or damage claim. The Board has no authority to pass upon the question of liability either as bearing on the matter of loss or damage or as bearing on a bare statement of liability which may or may not be used as a basis for further action. The remedy, where the matter of loss or damage is concerned, must, if the parties are unable to satisfactorily adjust it, be sought by action in a court of competent jurisdiction. Consequently, the Board has no power to grant the relief asked for.

January 12, 1920.

The Chief Commissioner and Commissioner Rutherford concurred.

Grand Trunk Railway Company vs. Quincy Adams Lumber Company, Limited. Claim for alleged undercharge.

File 22766.3.

The following is a copy of the report of the Chief Traffic Officer of the Board, dated January 16, 1920:—

“According to the Huntsville scales and complainants’ admission, 44,200 pounds of lumber were shipped from Ravensworth to Koshee siding (Severn). The Grand Trunk says the Ravensworth bill of lading described the shipment as 15,000 feet of hemlock; the description by the shippers on the Koshee bill of lading reconsigning to Strathroy was 14,000 feet of hemlock, which scaled at Allandale 47,500 pounds, or 3,300 pounds greater weight for 1,000 feet less lumber.

“Taking the Grand Trunk’s statement that the Ravensworth bill of lading carried the notation ‘for reshipment,’ and the Quincy company’s assertion that at Koshee ‘the car was finished loading’ as indicating straight completion and not sorting, the railway’s letter increasing the under-charge bill from \$16.86 to \$23.13 would be correct, since as there was no tariff provision for stop-off for completion the combination of locals would govern; but ‘re-shipment’ and ‘finishing’ or ‘completion’ are not incompatible with ‘sorting.’

“Sorting in transit, however, was permitted by the tariff (C.R.C. No. E. 3032), at 1 cent over the through rate from Ravensworth to Strathroy, provided no substitution of hard lumber for soft, or soft for hard, took place at Koshee. Assuming sorting and not merely completion of load, notwithstanding the difference in quantity and weight in and out; assuming, also, hemlock throughout the entire movement, as claimed; and assuming, further, the lumber added at Koshee to have come from no higher through rate point than Ravensworth; and so giving the tariff the most liberal application from the Assistant General Freight Agent’s point of view, the bill is reduced to \$8.02, as shown in his tabulation. The latter, however, includes the item objected to by complainants, namely, the L.C.L. or fourth-class rate of 25 cents per 100 pounds on the surplus weight of 3,300 pounds from Koshee.

“Clause ‘J’ of the tariff, on which the Assistant General Freight Agent relies, is clearly intended only to qualify the percentages of clause ‘I,’ and these referred only to lumber sawed and dressed. Clause ‘B,’ however, specifically states that the actual weight governed both to and from the stop-off point, subject, of course, to the published minimum.

"I, therefore, consider that the account should be as follows:—

44,200 pounds at 6½ cents, Ravensworth to Koshee.. . . .	\$28 73
47,500 " 5 cents, Koshee to Strathroy.. . . .	23 75
Koshee stop-off at 1 cent (clause 'D')...	4 42
Total.. . . .	<u>\$56 90</u>

"In other words, the under-charge is only in the stop-over, amounting to \$1.42."

The Board ruled accordingly.

OTTAWA, January 19, 1920.

Application of the Grand River Railway Company for approval of diversion of the line through the township of Waterloo and city of Kitchener, Ontario.

File No. 29690.

JUDGMENT.

The CHIEF COMMISSIONER:

This case is an application of the Grand River Railway Company for approval of a location plan filed with this Board, the object being to divert the location of a portion of their railway through the city of Kitchener, and was heard by the Board at Hamilton on the 29th day of October last at which the city of Kitchener and the Hydro-Electric Commission of Ontario were represented by counsel as well as the applicants.

The applicant company is the successor to the Berlin, Waterloo and Lake Huron Company, which was an amalgamation of two other companies created by legislation of the province of Ontario, and which by the provisions of chapter 85 of the Statutes of Canada, 1919, became entirely under the jurisdiction of this Board, and this Board is the only tribunal having the authority to approve or dismiss the application.

A part of the right of way of the applicant company through the city of Kitchener has hitherto been located upon King street, one of the principal streets of the city, but, as the charter for such location has expired by limitation of time, the railway company must either obtain a renewal of its rights upon King street, which I take it is practically impossible, or obtain a right of way of its own, if it is to continue as a transportation company, and, accordingly, on or about the 7th day of July last past, a plan showing the proposed diversion was prepared by the applicant company, a copy of which was filed with the city of Kitchener on the same date for their inspection and, if satisfactory, their approval. Another copy was filed with the municipal authorities of the township of Waterloo through which a portion of the proposed diversion passes; and, on the 27th day of September, consent was given by the township authorities for the location as requested. The matter seems to have been discussed by the municipal authorities of the city of Kitchener on at least three occasions, the first being on the 7th day of July, the second on the 26th day of September, and the third on the 6th day of October, and, at the meeting on the 26th day of September, further consideration was deferred for a short time in order that the Hydro-Electric authorities might have an opportunity of examining the proposal. The applicant company formally filed its plan with this Board asking for approval on the 3rd day of October, and, on the 4th day of October, the Hydro-Electric Commission filed a plan in the registry office of the city of Kitchener showing the proposed location of one of its lines along Cedar Grove avenue and extending from the Grand Trunk railway on the south to King street on the north, and, as the proposed location of the applicant company's line crosses Cedar Grove avenue south of King street nearly at right angles with the former, the question

has arisen as to which of the roads will be senior, assuming that both should be built, and the city of Kitchener in notifying the applicant company of the terms upon which it would consent to this location enclosed copy of a resolution adopted by the finance committee, dated, 7th of October, as follows:—

“That the plans submitted by the Grand River Railway Company of the proposed deviation of its tracks through the sewer farm in the south ward be approved, providing the company enter into an agreement, to be prepared by the city solicitors, indemnifying the city against all loss or damage which may be sustained by reason of such deviation and agreeing to assume all expense of all the street crossings on said line of deviation, including a diamond crossing for the Hydro-Radial at Cedar Grove avenue or elsewhere in that vicinity, and for protection for the other street crossings; and that the city solicitors provide in said agreement for any rectification of the height of grades as shown at street crossings on said plans, as well as for any other changes and additions that may be recommended by the city engineer.”

While I do not consider it necessary for the purposes of this application to decide which of the two companies would be senior, as that matter will come up again should one road ever ask the right to cross the other, yet I think it well that all the facts of the case should be placed on record as, if the matter ever arises again, it will be convenient to have them carefully stated.

At the hearing the opposition to the application seemed to come from the Hydro-Electric Commission more than from the city of Kitchener, the contention being that they had a prior location by reason of a general scheme entered into as far back as 1916 for building an electric railway from Toronto to London. This had been voted upon by the city of Kitchener as well as many other municipalities along the proposed route, and, by the terms of the contract entered into between the Hydro-Electric Commission and the city of Kitchener, according to the provisions of chapter 37 of the Statutes of Ontario, 1916, it was proposed to construct and operate a railway over the routes laid down in Schedule “A” of said Act, and Schedule “A” therein referred to, so far as the city of Kitchener is concerned, provides as follows:—

“Guelph-Berlin section:—

“From Guelph the line continues to Berlin, leaving Guelph in a westerly direction and entering Berlin from the northeast. The location lies north of the present G.T.R. between Guelph and Berlin.”

The Hydro-Electric Commission, by reason of this general scheme, contend that they have a prior location over Cedar Grove avenue, which, instead of running along the general line north of the Grand Trunk, runs directly from the Grand Trunk north to King street. In fact Mr. Pope, the representative of the Hydro-Electric Commission, was forced at the argument to admit that the proposed line on Cedar Grove avenue was to be a feeder to their main line when constructed. It was also admitted that the plan of the Hydro-Electric Commission which was filed with the registrar of the city of Kitchener was actually prepared on the 4th day of October, one week after they had obtained the applicant company's plan from the city council for the purpose of investigating it, and, having thus filed a plan showing the location upon a street which could never have been intended when the general scheme was under consideration in 1916, they contend they now have a priority right of location. I cannot agree with this proposition, and, in my opinion, it comes pretty nearly to what might be called “sharp practice” on the part of the Hydro-Electric Commission to obtain an advantage which they may or may not wish to enjoy in the somewhat distant future, as the only thing done so far looking toward construction is the filing of this plan. If they can secure priority rights over Cedar Grove avenue, then of course the other company will be compelled to install, operate, and maintain the diamond and interlocking plant, should the Hydro-Electric Commission ever decide to construct.

It is unnecessary at this state to go into what amounts to priority in the location, as that probably will be settled when the matter comes up for further adjudication, but I might say in passing that, according to the evidence, the Hydro-Electric have done nothing but prepare the plan hereinbefore referred to, while the applicant company actually has on the ground the rails and ties and is only awaiting permission of this Board to commence construction. In my view, therefore, the application should be granted, subject, of course, to all the rights which the city of Kitchener possesses as to protection of the Cedar Grove avenue crossing as well as all other public streets which the right of way shall cross in completing the proposed diversion.

OTTAWA, January 17, 1920.

Commissioner Boyce concurred.

The ASSISTANT CHIEF COMMISSIONER :

On the facts, as clearly set out in the judgment of the Chief Commissioner, I am of opinion that no such state of facts has been established as would justify the Board in refusing to grant the application of the Grand River Railway Company.

ORDER No. 29182.

In the matter of the application of the Vancouver and Districts Joint Sewerage and Drainage Board, hereinafter called the "applicant," for an order fixing a rate on sand and gravel on the Lulu Island Branch of the British Columbia Electric Railway Company, from the Vancouver Terminals to Twenty-fourth avenue, alleging that the rate offered, namely, 40 cents a yard, is excessive.

File No. 25705.8.

TUESDAY, the 9th day of December, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Vancouver, November 21, 1919, the applicant and the railway company being represented at the hearing, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

F. B. CARVELL,
Chief Commissioner.

GENERAL ORDER No. 280.

In the matter of the General Order of the Board No. 188, dated April 23, 1917, approving regulations for the uniform maintenance of way-flagging rules for impassable track, and General Orders Nos. 216 and 248, amending the same; and the direction of the Board that that part of the said orders affecting flagging other than manual flagging stand for further consideration.

Files Nos. 4135.44 and 4135.25.

TUESDAY, the 23rd day of December, A.D. 1919.

Hon. F. B. CARVELL, K.C., *Chief-Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Such further consideration having been had, —

It is ordered: That the said General Order No. 248, dated August 19, 1918, be, and it is hereby, amended by striking out regulation 9 on page 2 of the Order and substituting therefor the following, namely:—

“9. That a signal of a serviceable type, to be approved by the Board, be used to display the signals directed to be provided under rules 3 (b) and 6 (yellow signal) of this Order, and rule 35 (yellow signal) of the Uniform Code of Operating Rules.”

F. B. CARVELL,
Chief Commissioner.

ORDER No. 29220.

In the matter of the application of the Canadian Northern Railway Company, hereinafter called the “applicant company,” under section 256 of the Railway Act, 1919, for authority to construct a highway crossing over its railway in the south east quarter of section 9, township 26, range 17, west of the 3rd meridian, in the province of Saskatchewan, as shown on the plan and profile dated Winnipeg, November 9, 1916, on file with the Board under file No. 19221.170.

FRIDAY, the 2nd Day of January, A.D., 1920.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon reading the application and the written submissions filed in support thereof and on behalf of the department of highways for the Government of the province of Saskatchewan.

It is ordered: That the applicant company be, and it is hereby authorized to construct a highway crossing over its railway in the southeast quarter of section 9,

township 26, range 17, west of the 3rd meridian, in the province of Saskatchewan, as shown on the said plan and profile on file with the Board under file No. 19221.170; the said crossing to be constructed in accordance with "The Standard Regulations of the Board Affecting Highway Crossings, as amended May 4, 1910, at the expense of the Canadian Northern Town Properties, Limited, the cost of operation and maintenance to be borne and paid by the applicant company.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 29237.

In the matter of the complaint of the Broadview Ratepayers' Association of Burnaby, in the province of British Columbia, against the fares charged by the British Columbia Electric Railway Company, Limited, in the district of Broadview.

File No. 21404.5.

SATURDAY, the 10th day of January, A.D. 1920.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Vancouver, November 21, 1919, the complainants and the railway company being represented at the hearing, and what was alleged,—

It is ordered: That the complaint be, and it is hereby, dismissed.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 29263.

In the matter of the application of the Canadian Pacific Railway Company, as lessee exercising the franchises of the Fredericton and Grand Lake Coal and Railway Company, under section 330 of the Railway Act, 1919, for approval of its Standard Mileage Freight Tariff, C.R.C., No. 84, on file with the Board under file No. 29866.1.

SATURDAY, the 10th Day of January, A.D., 1920.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board.

It is ordered: That the Standard Tariff of maximum mileage freight rates, C.R.C. No. 84, to apply between stations on the railway of the Fredericton and Grand Lake Coal and Railway Company, be, and it is hereby, approved; the said tariff, with a reference to this Order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 29264.

In the matter of the application of the Canadian Pacific Railway Company, as lessee exercising the franchises of the New Brunswick Coal and Railway Company, under section 330 of the Railway Act, 1919, for approval of its Standard Mileage Freight Tariff, C.R.C. No. 51, on file with the Board under file No. 29867.1.

SATURDAY, the 10th Day of January, A.D., 1920.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board.

It is ordered: That the Standard Tariff of maximum mileage freight rates, C.R.C. No. 51, to apply between stations on the railway of the New Brunswick Coal and Railway Company, be, and it is hereby, approved; and that the said tariff, with a reference to this Order, be published in at least two consecutive weekly issues of the *Canada Gazette*.

F. B. CARVELL,
Chief Commissioner.

GENERAL ORDER No. 281.

In the matter of application No. 2, dated December 30, 1919, of the Railway Association of Canada, under section 345 of the Railway Act, 1919, for permission to issue free or reduced rate transportation to the classes of persons specified in the application.

File No. 496.26.

MONDAY, the 12th day of January, A.D. 1920.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

HON. W. B. NANTEL, K.C., *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon reading the application, and considering what was filed in support thereof,—

It is ordered: That railway companies within the legislative authority of the Parliament of Canada be, and they are hereby, permitted, until further order, to issue free or reduced rate transportation to the following class of persons, namely:—

Private Secretaries of Ministers of the Dominion Government, including the Private Secretary of the Leader of the Opposition.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 29277.

In the matter of the application of the Canadian Northern Railway Company, hereinafter called the "applicant company," under section 276 of the Railway Act, 1919, for authority to open for the carriage of freight, temporarily, its MacRorie Westerly branch from mileage 105.0, Glidden, to mileage 115.0 Eaton, in the province of Saskatchewan.

File No. 19221.115.

FRIDAY, the 16th day of January, A.D. 1920.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

It is ordered: That the applicant company be, and it is hereby, authorized to carry traffic, temporarily, over its MacRorie Westerly branch, from mileage 105.0, Glidden, to mileage 115.0, Eaton, in the province of Saskatchewan, subject to and upon the condition that trains operated over the said line shall not exceed a speed of eighteen miles an hour.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 29280.

In the matter of the applications of the Canadian Manufacturers' Association on behalf of the Canadian General Electric Company, Limited, and the Canadian Westinghouse Company, Limited, The Solex Company, Limited, Northern Electric Company, Limited, Dominion Lamp Company, Limited, and the Board of Trade of the city of Toronto, hereinafter called the "applicants," for a reduction from double first-class to first-class rates on incandescent electric lamps carried by express.

File No. 4397.50.

FRIDAY, the 16th day of January, A.D. 1920.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Toronto, October 31, 1919, the applicants, the Express Traffic Association of Canada, and the Dalry Electric Company being represented at the hearing, and what was alleged; and upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the rating of two times first-class for electric light bulbs, shown in the Express Classification for Canada No. 4, be, and it is hereby, reduced to one and one-half times first-class; the change to be made effective not later than February 1, 1920.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 29282.

In the matter of the application of the Canadian Northern Pacific Railway Company, hereinafter called the "applicant company," under section 276 of the Railway Act, 1919, for authority to open for the carriage of freight traffic that portion of its line of railway from Victoria to Suke, a distance of twenty-five miles:

File No. 29893.

MONDAY, the 19th day of January, A.D. 1920.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

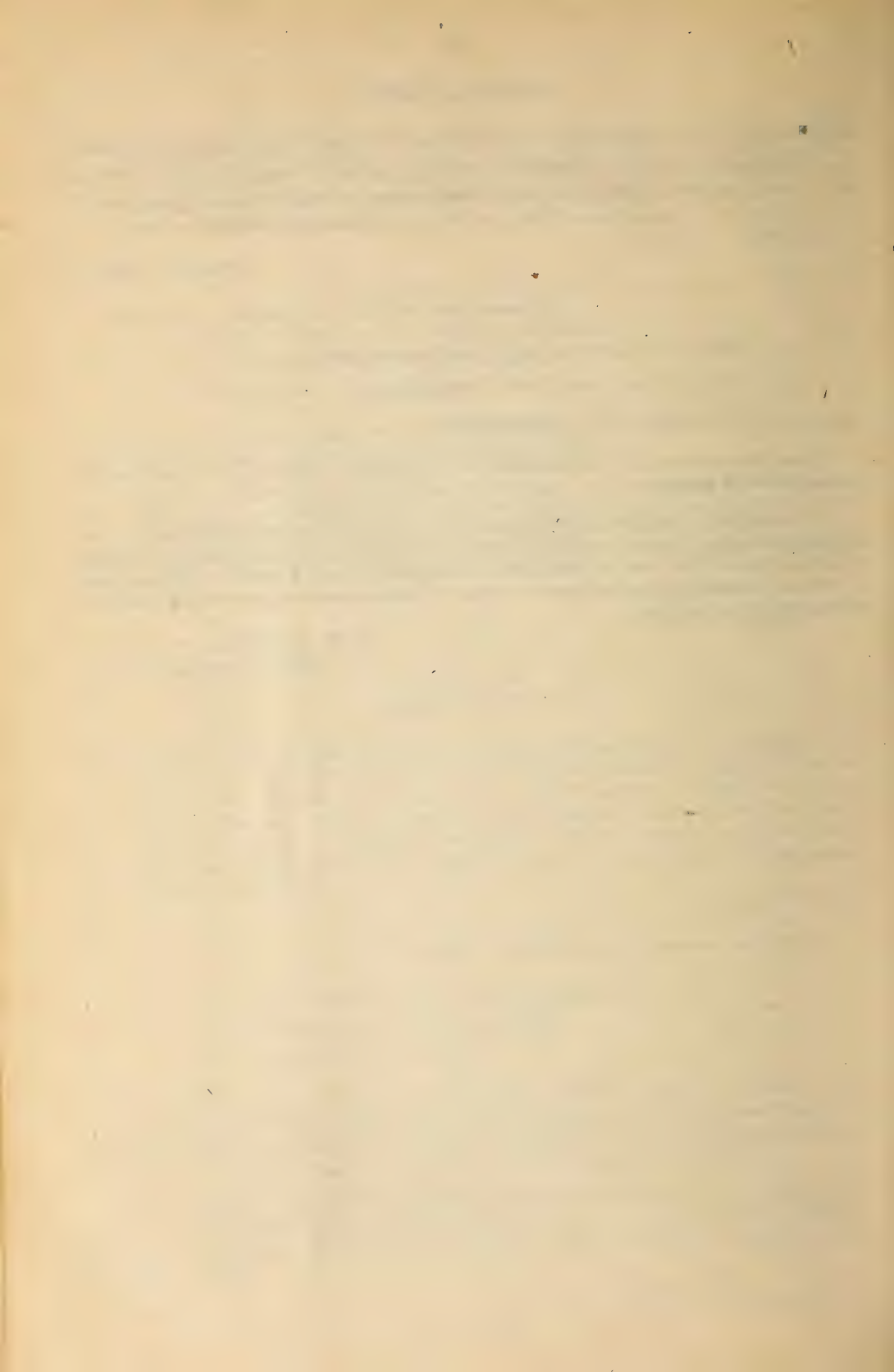
S. J. McLEAN, *Asst. Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Chief Engineer,—

It is ordered: That the applicant company be, and it is hereby, authorized to open for the carriage of freight traffic that portion of its line of railway from the junction with the Patricia Bay line, mileage 1.80 to mileage 26.5 from Victoria, in the province of British Columbia; provided that the speed of trains approaching crossings shall not exceed ten miles an hour.

F. B. CARVELL,
Chief Commissioner.



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The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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In the matter of the applications of the Canadian Manufacturers' Association on behalf of the Canadian General Electric Company, Limited, and the Canadian Westinghouse Company, Limited, the Solex Company, Limited, Northern Electric Company, Limited, Dominion Lamp Company, Limited, and the Board of Trade of the City of Toronto, hereinafter called the "applicants," for a reduction from double first-class to first-class rates on incandescent electric lamps carried by express.

File No. 4397.50.

REPORT OF CHIEF TRAFFIC OFFICER OF THE BOARD.

Referring to the hearing at Toronto on the 31st October of the application of the Canadian Manufacturers' Association and others for the restoration of the first-class rating on incandescent electric lamps carried by express.

Although a printer's proof of the proposed supplement containing this and other changes in the Express Classification No. 3 was sent by the Express Traffic Association to the Canadian Manufacturers' Association and the forty-nine Boards of Trade enumerated in General Order 153, with the usual request that any objections be filed with the Board, no objections were recorded against this particular item, which the supplement plainly described as "electric light bulbs." Mr. Walsh and Mr. Marshall wrote the Board at the time that they were to confer with Mr. Ham for the purpose of going over the whole supplement, but in the year that went by after the conference before the approving Order No. 27399 of July 6, 1918, issued, nothing further was heard from the parties.

The mere fact that the classification by freight is higher than by express (and not on this article alone) is not, I submit, sufficient justification for corresponding express increases. The tariff construction of the two services is altogether dissimilar. and in each the tariff and classification are linked together. The Board's judgment of December 24, 1910, in the general express inquiry, at page 57, points out that the refinements of the freight classification are impracticable as applied to express traffic. What is material is a comparison of the freight and express rates as rates, the superior quality of the express service being assumed as a matter of course; and in this connection it should be pointed out that by freight the risk of breakage of these lamps is the owner's, while by express the risk is in the rate when the fragile character of the contents is specified upon the container.

The following table compares the charge for 100 pounds by freight, and as it is by express on the double first-class basis, and as it would be at first-class as desired; from Toronto to the destinations used in Mr. Marshall's exhibit No. 1, to which have been added two or three others for better comparison. (The last column of the table is explained further on.)

These rates all include collection and delivery; and so as to make the comparison complete, at those destinations where the freight service has no cartage connection I have tentatively added the same cartage charge as at Toronto.

From Toronto to—	Freight.	Express.		
		D. 1st.	1st.	1½ 1st.
Hamilton..	\$1 18	\$1 60	\$0 80	\$1 20
London..	1 53	2 40	1 20	1 80
Windsor..	1 74	3 20	1 60	2 40
Kingston..	1 64	2 80	1 40	2 10
Montreal..	1 93	4 00	2 00	3 00
Quebec..	2 21	5 60	2 80	4 20
St. John..	2 61	8 00	4 00	6 00
Halifax..	2 68	9 50	4 75	7 15
Winnipeg..	4 96	13 20	6 60	9 90
Regina..	6 48	15 30	7 65	11 50
Saskatoon..	6 93	16 20	8 10	12 15
Calgary..	8 16	17 60	8 80	13 20
Nelson..	9 11	21 40	10 70	16 05
Vancouver..	10 00	23 60	11 80	17 70

The freight rates of this table being the working or "town" tariff rates, the comparison is one of actualities. But the basis of the present first-class express rate on the principle of averages, as laid down in the recent express judgment, is one and one-half times the standard maximum first-class freight rate to represent rail carriage, plus 60 cents per 100 pounds for the other services incidental to the express business; consequently, while the comparison shows the surplus paid for the better service, it does not indicate the express tariff as out of line.

A comparison of the former 1st class or "merchandise" express rates with the freight rates as they were before the Order in Council, would, if it were necessary to introduce old records, prove that for very many movements the charge by express was actually lower than by freight; a fact that explains the complaint of the express people that their cars were unduly burdened with these lamp shipments to the disadvantage of other lines of trade.

As regards applicants' comparison with the rates from the United States, Mr. Ham stated that his association had been endeavouring to get the official classification of the American Railway Express Company, increased to double 1st class at least into Canada. The Canadian companies are parties to this classification on international traffic, but it seems that their influence at the conference table is not equal to that of the consolidated American companies. As with the freight, so with the express, certain differences will exist so long as the classifications of the two countries are different.

Neither party was able to show definitely whether the importations were coming in by freight or by express. His agents having been unable to enlighten him, Mr. Ham assumed that the routine was not by express. Mr. Campbell, of the General Electric Company, was also unable to settle this point, although he was positive that some did come in by express. The uncertainty of the express agents is probably accounted for by the fact that being 1st class freight in the American classification, it is not required of the United States shipper to specify the contents on his package, except to mark it as "glass" to ensure extra care in handling. The information that Mr. Walsh thought could be furnished later has not been put in. This uncertainty would seem to negative the American competition as serious.

There can be no question that these lamps, containing, as they must, a vacuum within themselves, are light in weight compared with bulk. The three boxes shown the Board by Mr. Campbell weighed 6.6, 8 and 9 pounds, respectively, per cubic foot. The exhibits and evidence indicate irregular weights running from 2.59 to 11.74 pounds

per cubic foot. I do not understand the companies to have found it necessary at any time to incur the labour of preparing reliable measurement statistics of the general run of packages of all kinds by express, and am inclined to view Mr. Ham's estimate of 30-50 pounds per cubic foot as rather high. A limited test recently, by my direction, gave an average of 21 pounds, contents unknown. I hazard the opinion that 25-30 pounds would be nearer the mark.

The shippers' representatives, if given 1st class, offered to submit themselves to Rule 16 of the express classification, which permits the companies to exact an extra conventional or penalty weight, based on the sum of the three lineal dimensions, as compensation for the 1st class rate on such light and bulky things as millinery, feathers, artificial flowers, baskets, etc. These lamps, though light and bulky to a less extent, are, however, too heavy for the rule to be applicable, so that the offer does not amount to a concession.

Comparing electric light bulbs with the multitude of articles carried at 1st class, is D. 1 too high? The 1st class averages 30 per cent greater than the 2nd. Owing, however, to the special character of the 2nd class the comparison may not be conclusive, yet, having regard to the evidence and while I consider 1st class too low, the comparison is enough, in my judgment, to condemn the spread of 100 per cent as excessive. This spread may be proper in the case of unusually light or unwieldy articles, or those which do not admit of economical stowage, but the goods in question cannot be said to be in this category. There is an intermediate $1\frac{1}{2}$ 1st class, and the last column of my table may show a reduction to this class to be a fair settlement, and I beg so to recommend.

Respectfully submitted.

OTTAWA, December 27, 1919.

The following order issued on the Chief Traffic Officer's report:—

ORDER No. 29280.

FRIDAY, the 16th day of January, A.D. 1920.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Toronto, October 31, 1919, the applicants, the Express Traffic Association of Canada, and the Dalry Electric Company being represented at the hearing, and what was alleged; and upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the rating of two times first-class for electric light bulbs, shown in the Express Classification for Canada No. 4, be, and it is hereby, reduced to one and one-half times first-class; the change to be made effective not later than February 1, 1920.

F. B. CARVELL,
Chief Commissioner.

Re protection at Metcalfe, Caradoc, Richmond, Oxford and Victoria Streets, Strathroy, Ontario—G.T.R.

Case 4795; files 13157, 26765.145, 26765.147, 20127.

REPORT OF S. J. McLEAN, ASSISTANT CHIEF COMMISSIONER.

In accordance with instructions issued by the Chief Commissioner under clause (b) of subsection 1 of section 12, the undersigned was authorized to take evidence at Strathroy, Ont., in regard to certain matters of protection of crossings which had been brought to the Board's attention, and to report thereon to the Board.

The street crossings concerning which complaint was made are Metcalfe and Caradoc streets. At the hearing, the matter of protection at Richmond, Oxford and Victoria streets was raised. The railway not having been notified as to these streets, an opportunity was given to it to make written submissions, which have been received.

Under date of January 27, 1906, an order of the Board issued providing—

"The Board doth order:

"1. That the Grand Trunk Railway Company of Canada do forthwith remove the fences and piles of lumber on the company's property at the said crossing of Caradoc street from the railway company's right of way, a distance of fifty feet at the east end of the lot and twenty feet at the west end of the lot.

"2. That any fence along the company's right of way on said lot be maintained at a height of not more than four feet.

"3. That no lumber or other material, north of a line from a point fifty feet south of the railway company's right of way on the east end of the said lot and twenty feet from the said right of way on the west end of the said lot, be allowed at a greater height than four feet above the ground.

"4. That the said Grand Trunk Railway Company of Canada do forthwith remove the warehouses near the crossing of said Metcalfe street.

"5. That no engine or train of the said Grand Trunk Railway Company of Canada shall cross any street in the said town of Strathroy at a greater speed than ten miles an hour."

Order No. 10769 of June 21, 1910, subsequently issued, providing as follows:—

"1. No engine or train shall cross any of the following streets, namely, Oxford, Richmond, Metcalfe, Caradoc, and Victoria, in the town of Strathroy, at a greater speed than ten miles an hour.

"2. No engine, tender, car or cars shall stand or remain for any period of time within fifty feet of either of the boundary lines of any of the above-mentioned streets."

The returns for Caradoc street for a twenty-four-hour period in the month of September show the following detail as to the hours in which the bulk of traffic is to be found:—

6 a.m. to 6 p.m.—

19 train movements, or 52.8 per cent of the total.

738 pedestrian movements, or 72.4 per cent of the total.

369 vehicular movements, or 68.0 per cent of the total.

6 p.m. to 10 p.m.—

6 train movements, or 10.7 per cent of the total.

221 pedestrian movements, or 21.7 per cent of the total.

129 vehicular movements, or 31.6 per cent of the total.

Summarizing this, the results for the period *6 a.m. to 10 p.m. are—*

63.5 per cent of total train movements.

94.1 per cent of total pedestrian movements.

99.6 per cent of total vehicular movements.

There are 45 switching movements of which 15 take place between 10 p.m. and 6 a.m.

There are seven tracks across this street and they cover a distance of approximately 275 feet. The cars standing on the yard tracks afford a limitation of view.

The situation in regard to Metcalfe street is as follows:—

From 6 a.m. to 6 p.m. there are—

17 train movements, or 51.5 per cent of total.

607 pedestrian movements, or 67.7 per cent of total.

446 vehicular movements, or 81.8 per cent of total.

From 6 p.m. to 10 p.m. there are—

6 train movements, or 18.1 per cent of total.

248 pedestrian movements, or 27.6 per cent of total.

85 vehicular movements, or 15.6 per cent of total.

Summarizing this in the period from 6 a.m. to 10 p.m. there are—

69.6 per cent of total train movements.

95.3 per cent of total pedestrian movements.

97.4 per cent of total vehicular movements.

Of the switching movements, which total 31, three are in the period from 6 p.m. to 6 a.m., one being in the period 6 p.m. to 7 p.m., and the other two in the periods 1 to 2 and 2 to 3 a.m., during which hours no vehicular movements and two pedestrian movements are shown.

There are seven tracks over this street covering a distance of about 525 feet. When the yard is free from cars, the view of trains running on the tracks is good, but the view is frequently blocked by cars in the yard.

Consideration has been given to having gate installation at both of the streets above mentioned. On account of the spread of tracks concerned, there would have to be operation from a tower; and on account of the number of tracks and the movements concerned, the gate operation would be difficult. On account of the 8-hour day, gate operation, day and night, would require three watchmen, at a wage of \$90 each, or a total of \$270 per month. The wages and maintenance of each set of gates would cost approximately, under present conditions, \$4,000 per annum.

An estimate in another connection with the cost of installation of gates has been given as being \$1,650. On account of the peculiar conditions at both of these crossings the cost of installation of gates would be in excess of those figures.

In accordance with the practice of the Board, distribution of cost as between the municipality and the railway is justifiable.

The question of the cost of the gates is referred to not on the ground that expense concludes the matter, since the question of protection and safety is still more important, but in weighing methods of protection if the less expensive method of protection will reasonably take care of public safety, then it is justifiable to give weight to the question of expense. The railways, under the increased wage scales which have had the general support of the public, have been subjected to very large increases in costs, which, on the figures submitted by the railways, are in excess of the increases in revenues which were allowed by P.C. Order No. 1863; and it is contended that they have also been subjected to other increased costs.

I recommend, as a reasonable protection at Caradoc and Metcalfe streets, watchmen between the hours of 6 a.m. and 10 p.m.; that is to say, two watchmen in each case working for an 8-hour day.

There is some traffic outside these hours, but the great bulk of the movement is covered in this period.

As to the distribution of cost, I would recommend that 40 per cent be paid by the municipality and 60 per cent by the railway.

As to the other crossings above mentioned, I am of the opinion that additional protection is not at present necessary. As pointed out in Order No. 10769, already quoted, a speed limitation of ten miles an hour is provided for; and there is the further provision that engines, tenders, cars, etc., are not to stand or remain for any period of time within fifty feet of either of the boundary lines of any of the above mentioned streets.

In the order in question, no penalty is contained, section 34, subsection 3, authorizes the Board, by regulation or order, to provide penalties in the case of an offence against any regulation or order made by the Board. I would recommend that the provisions of Order No. 10769 be continued, and the order amended by providing for a penalty of \$25 in the case of each breach of the order.

The Chief Commissioner, the Deputy Chief Commissioner, and Commissioners Goodeve, Boyce and Rutherford concurred.

January 16, 1920.

Application of the Canadian Pacific Railway Company for authority to construct at grade the tracks of its Lanigan Northeasterly branch at mileage 29, across the tracks of the C.N.R. at Watson, in the province of Saskatchewan.

File No. 29383.2.

JUDGMENT.

The CHIEF COMMISSIONER:

The first proposal of the company was to locate the line some distance east of the present location in order to get away from the C.N.R. yard, but, at the earnest solicitation of the town authorities, the new location is proposed. This location is supported by the town of Watson, because, according to their contention, on account of the topography of the country, should the railway be located farther to the west as suggested by the Canadian National Railways, it would be so far away that it would practically mean the creation of another small town or village and their hope is to have everything centred in the one place, which I believe is a village of about 400 people at the present time.

The Canadian National Railway objects to the present location because it crosses their line only 631 feet west of the switch point at the western end of their yard, their contention being that every switching movement at the western end of their yard would have to pass over the diamond both in and out, and contend the crossing should be at least 2,200 feet west of that point or outside of their signal post. They also allege that the Board would be violating a well recognized principle in allowing the applicant company to cross their lines within the distant signal of the interlocking plant and cite the decision of this Board in the case of Princess, Alta., where the C.P.R. successfully resisted an application of the Canadian National Railways to cross their lines within the said distance. An examination of the file, however, shows that in the Princess case both roads were entering the town practically parallel to each other, and it was only a question of whether the Canadian National should cross the C.P.R. out of the town or wait until they came within the distant signal point.

This case is entirely different, because, as the roads cross each other practically at right angles, the applicant company must either cross at this proposed location or at least half a mile to the one side or other of the town. It is alleged that, should they go west the 2,200 feet as suggested by the Canadian National Railways, they would, in doing so, cross a creek and swamp land, which would make their station extremely difficult of access excepting by a lengthy detour. On the other hand, should the application be granted, as the crossing is within a few hundred feet of the junction of two road allowances and in the immediate vicinity of the town itself, the station would be constructed just alongside of the north and south road and also within a very short distance of the C.N.R. station. While, primarily, I take it to be the duty of

this Board to concern itself with the location, construction, and operation of railways, yet I think we should to some extent take into consideration the manner in which the railways will serve the public after being constructed, and we have so many instances in Canada of two railway stations being located a long distance apart in a small town or village that it requires no argument to convince any person of the great detriment which it invariably works to the locality, and, therefore, in my opinion, the application should be granted, coupled with the direction to the Canadian Pacific Railway Company that their station should be placed as near the town as is reasonably convenient, on the north side of the C.N.R. crossing, and to the east of the north and south road allowance.

While I realize this decision may to some extent violate the well recognized principle hereinbefore referred to, yet it must be understood that, not only is it strongly urged by the town of Watson, but the applicant company, in accepting the location at the point indicated, does so as the junior railway and will be subject to all the disabilities incident thereto. There will be an interlocking plant, to be constructed, maintained, and operated by the applicant company, and, should it at any time be necessary to use the crossing for switching and other purposes, of course the C.N.R. will have the right of way. The application will, therefore, be granted subject to proper directions as to protection, etc., by the proper officials of this Board.

OTTAWA, January 19, 1920.

The Assistant Chief Commissioner, the Deputy Chief Commissioner and Commissioners Goodeve, Boyce and Rutherford concurred.

ORDER No. 29332.

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "applicant company," under section 252 of the Railway Act, 1919, for authority to construct the tracks of its Lanigan Northeasterly Branch, at mileage 29, across the tracks of the Canadian National Railways at Watson, in section 29, township 36, range 18, west of 2nd meridian, as shown on the plan and profile dated Winnipeg, July, 1919, on file with the Board under file No. 29383.2.

MONDAY, the 2nd day of February, A.D. 1920.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, January 7, 1920, in the presence of counsel for the applicant company and the Canadian National Railways, and what was alleged,—

It is ordered as follows:—

1. That the applicant company be, and it is hereby, authorized to construct, at grade, the tracks of its Lanigan northeasterly branch, at mileage 29, across the tracks of the Canadian National Railways at Watson, in section 29, township 36, range 18, west 2nd meridian, as shown on the said plan and profile on file with the Board under file No. 29383.2.

2. That the applicant company be, and it is hereby, directed to erect its station at the point in question as near the town of Watson as is reasonably convenient, on the north side of the crossing of the Canadian National Railways and to the east of the north and south road allowance.

3. That the applicant company, at its own expense, under the supervision of an engineer of the Canadian National Railways insert a diamond in the track of the said Canadian National Railways at the said crossing.

4. That the said crossing be protected by an interlocking plant; derails and home and distant signals to be placed on the lines of both companies on each side of the said crossing; and the said derails to be interlocked with the said signals.

5. That the normal position of signals on both lines be at "danger" and that in the movement of trains of the same or of a superior class over the said crossing, the trains of the Canadian National Railways shall have priority.

6. That plans showing the position of the derails and signals, a description of the machinery to be provided, and other necessary details, be submitted to an engineer of the Board for his approval.

7. That the man or men in charge of the said interlocking plant be appointed by the applicant company.

8. That the applicant company bear and pay the whole cost of providing, maintaining and operating the said interlocking plant.

F. B. CARVELL,
Chief Commissioner.

Complaint of the Consolidated Gas, Electric Light and Power Company of Baltimore, Maryland, against the rates on bog iron ore charged by the C.P.R. Co. via connecting lines from points in Quebec to Baltimore.

File 3079.37.

JUDGMENT.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Application was made in the following terms:—

"The Consolidated Gas, Electric Light and Power Company of Baltimore, state of Maryland, United States of America, hereby applies to the Board for an Order and reparation under sections 317-318 of the Railway Act in conformity with the facts hereinafter set forth.

"The complaint of the above-named complainant respectfully shows:—

"1. That the Consolidated Gas, Electric Light and Power Company of Baltimore is a corporation incorporated under the laws of the state of Maryland, United States of America, and said corporation is engaged in the manufacture, distribution and sale of gas and electricity for illuminating, power and heating purposes.

"2. That the defendants above named are common carriers engaged in the transportation of passengers and property, wholly by railroad; between points in the Dominion of Canada and points in the United States of America.

"3. That the above-named complainant uses approximately six thousand tons of bog iron ore annually in connection with the purification of gas, and that for the past two years said ore has been obtained from Pointe du Lac, province of Quebec, Dominion of Canada.

"4. That pursuant to complainant's application, the Canadian Pacific Railway Company, connecting lines concurring, published, effective February 4, 1918, in supplement number fifteen, Canadian Pacific Railway Company tariff E2946, C.R.C. E3281, I.C.C. E1939, commodity rate of 20 cents per 100 pounds applying on bog iron ore, in carloads, minimum weight 60,000 pounds, from Three Rivers, province of Quebec, Dominion of Canada, to Baltimore, state of

Maryland, United States of America, for routing via Canadian Pacific Railway Company to Prescott, Ont., thence via Canadian Pacific Car and Passenger Transfer Company, to Ogdensburg, New York, thence via New York Central Railroad to Newberry Junction, Pennsylvania, thence via Baltimore and Ohio Railroad to Baltimore, Maryland. By virtue of the intermediate clause in the tariff said rate was applicable on bog iron ore from Pointe du Lac, Quebec, to Baltimore, Maryland. Said rate was republished in Canadian Pacific Railway Company tariff E3183, C.R.C. E3495, I.C.C. E2028, applicable on bog iron ore from Red Mill, Que., to Baltimore, Maryland, applying via the same route subject to the intermediate clause in the tariff permitting application of said rate on bog iron ore from Three Rivers and Pointe du Lac, Que., to Baltimore, Maryland. Last named tariff is still in effect.

"5. That effective June 25, 1918, the Board of Railway Commissioners for Canada, by Special Permission Number 76, authorized Canadian railroads to increase freight rates from points in the Dominion of Canada to points in the United States to the same extent as those in the reverse direction ordered by the McAdoo award known as United States Railroad Administration General Order Number 28. Said orders provided a specific increase of 30 cents per net ton on iron ores. Rates on other commodities not specifically provided for were increased 25 per centum.

"6. That notwithstanding the fact that the said orders provided a specific increase of 30 cents per net ton on iron ores the defendants did not apply such increase of 30 cents per net ton on bog iron ore, but illegally and unjustly have applied the general increase of 25 per centum thereby making the present rate 25 cents per 100 pounds from Red Mill, Que., to Baltimore, Maryland, instead of 21½ cents per 100 pounds as authorized by the said U. S. General Order Number 28 and Canadian Special Permission Number 76. Said increase of 25 per centum was published in Special Supplement Number 1 to Canadian Pacific Railway Company's Tariff E3183, C.R.C. E3495, I.C.C. E2028.

"7. That the defendants have alleged as an excuse for their said illegal act the pretension that bog iron ore is not an iron ore and that it is not used as iron ore.

"8. That in fact bog iron ore is an iron ore contemplated in the increase of rates on iron ores provided for by the aforementioned Special Permission Number 76 and General Order Number 28, wherein iron ores are referred to in the plural.

"9. That bog iron ore is a variety of iron ore called limonite, and limonite is the commonest form of iron ore. (See Geological Survey of Canada, 1909, page 94; Butler's Hand Book of Minerals, page 102; Proceedings of the Canadian Mining Institution, 1912, at page 241.)

"10. That the ultimate use to which a product is put is not a matter which would justify the carrier in making a tariff contrary to the order of the Board.

"11. That the carrier has no interest in the uses to which commodities transported by it shall be put in order to enjoy a transportation rate.

"12. That since June 25, 1918, 14,203,986 pounds of bog iron ore have been shipped to complainant from Pointe du Lac, Que., on which complainant has been compelled to pay and has paid under protest freight charges, based on the rate of 25 cents per 100 pounds, and by reason of the application of the said rate of 25 cents per 100 pounds instead of the rate of 21½ cents per 100 pounds, complainant has suffered loss and damage to the extent of \$4,971.39.

"13. That complainant will in future require further large shipments of bog iron ore from Point du Lac and other points in the province of Québec.

"14. That by reason of the facts hereinabove alleged, complainant has been subjected to the payment of rates for transportation which were when exacted, and still are, unjustly discriminatory in violation of sections 317-18 of the Canadian Railway Act.

"Wherefore complainant prays that an order do issue restraining the defendants from exacting the said rate of 25 cents per 100 pounds on bog iron ore from Point du Lac, Que., and other points to which the said rate now applies, to Baltimore, Maryland, and requiring them to substitute therefor the legal and authorized rate of 21½ cents per 100 pounds for the said commodity between the said points."

At the hearing, counsel for the applicant said the application was for an interpretation of the McAdoo Order on bog iron ore. It was set out that the Board's Special Permission No. 76 made provision that the order was to be reciprocal. The contention of the applicant was that his commodity came under the list of commodities enumerated in the McAdoo Order. It was pointed out that on page 6, section 2, of that order it was provided that certain articles should be increased by the amount set opposite each. Reference was made to the fact that there was provision for 30 cents per net ton of 2,000 pounds on iron ores. It was set out that bog iron ore shipped from points near Three Rivers to Baltimore was concerned in the present application. The contention was made that this commodity should have been included under iron ores, thus being subject to an increase of 30 cents per net ton, while as a matter of fact it had been put under the general increase of 25 per cent, which had the effect of increasing the rate from 20 cents per 100 pounds to 25 cents.

The contention of the railway was that bog iron ore was carried as a special item entirely distinct from ordinary iron ore.

The question was raised as to the bog iron ore being used for different purposes than those arising in connection with iron ores as ordinarily referred to. The railway pointed out that there was a difference in use. The answer made by counsel for applicant was that the ultimate use to which the article is put is not a matter of concern to the railway.

Representation was made by counsel for the Canadian Pacific that the rate as charged was in accordance with the practice as approved and the interpretation as given by the United States Railroad Administration. The following excerpt from the evidence is pertinent:—

"Mr. FLINTOFT: When the matter arose in the summer of 1918, Mr. Macdonnell had our attorney at Washington communicate with the United States Railroad Administration, drawing attention to the fact that the rates on iron pyrites had been advanced the full 25 per cent, and that we had a deposit of bog iron ore on our rails that was moving to Baltimore, and asked him to inquire from the United States Railroad Administration as to whether it should be treated as an iron ore under the general item, or whether it should be treated specially and subjected to the 25 per cent advance. The reply was, having submitted the matter to the Railroad Administration, they advised him that his understanding of the rates was correct, and that has been confirmed by more recent communications with Mr. Campbell, of the Eastern Freight Traffic Committee of the United States Railroad Administration, in reply to inquiries from Mr. Ransom, who confirmed the understanding that this should be treated separately from the ordinary iron ore for smelting purposes."

It was further stated by counsel for the Canadian Pacific Railway Company that this railway was in the unfortunate situation that the United States Railroad Administration made the rates, and that this organization in interpreting its own action refused to join in anything less than a 25 per cent advance.

In the course of the hearing, at pp. 8406, 8407, the following remarks were made by the Chief Commissioner:—

"The CHIEF COMMISSIONER: . . . On the face of it, one would think this complaint ought to be given effect to. But the underlying and the real intent of the order was, as the complainant states, to adopt absolutely in Canada the advances the railways obtained, as nearly as might be, under the McAdoo Order."

"We have not before us tariffs one way or the other which would show whether Mr. McAdoo, in interpreting his own Order (and he is the man who should interpret it) treats bog iron ore in the same way as ordinary iron ore, or whether he thinks the definition "bog" as against ordinary iron is such a distinction as should remove it from the iron ore clauses or not. Apparently bog iron has taken a higher classification than ordinary iron. On the other hand, there are lots of ores—and it well may be that the use of the word "iron" by Mr. McAdoo in his Order was for the purpose of covering all iron ore movements, never mind what their classification might be, whether pyrites, bog iron, oxide of iron or anything else.

"If this case turns entirely upon the question of the American tariffs, as no tariff has been filed here, the Board will have to find out for itself what tariffs have been filed in American territory.

"Apart from such action on the part of the American authorities, I would have said the complaint is well founded."

Since the hearing, written submissions have been made by the parties bearing on the interpretation of the provisions of the McAdoo Order as affecting the commodity in question. As showing the contradictory nature of what has been submitted, reference may be made to the following extract from a communication from applicant's solicitors:—

"After exhaustive inquiry, we have been unable to find any American decision on the point raised at the argument.

"We are instructed that Mr. Williams, the assistant secretary of the Eastern Freight Traffic Committee of New York, advised the manager of the Consolidated Company's Traffic Department that the committee was of the opinion that the Consolidated Company's contention was sound and the bog iron should only be subjected to the 30 cents per ton increase but it was the practice of the committee to follow the decision of the Canadian authorities on traffic originating in Canada."

Apparently there has been some misunderstanding as to the position taken by the Mr. Williams referred to in the preceding extract, for the following letter is filed with the Board:—

CANADIAN FREIGHT ASSOCIATION,

MONTREAL, QUE., August 7, 1918.

File 1128.

Mr. H. E. MACDONNELL, A.F.T.M.,
C.P.R., Montreal.

Bog Iron Ore—Canada to United States Points.

"DEAR SIR,—In reference to our conversation at meeting on the 5th. Attached hereto you will find copy of letter from Mr. Zeigler, Traffic Manager of the Consolidated Gas, Electric Light & Power Company of Baltimore, dated July 23, addressed to Mr. Campbell of the Eastern Freight Traffic Committee. For you information, I quote from Mr. Campbell's letter of July 28, in connection therewith:—

'In letter of July 23, the statement that the writer had intimated that our committee was convinced that their contentions were sound and well founded, is incorrect. No such intimation was made.'

Yours truly,

G. C. RANSOM,

Chairman."

Further, as bearing on the contradictory statements submitted, the submission of the Canadian Pacific Railway Company is as follows:—

"I find that on the request of our Mr. H. E. Macdonnell, Mr. George F. Snyder, our Attorney at Washington, has made inquiry of the railroad administration as to its interpretation of General Order No. 28, and for the Board's information I enclose copies of the correspondence which has taken place.

"As to the nature of the commodity, the following extract from a letter from Mr. Ben Campbell, chairman of the Eastern Freight Traffic Committee of the Federal Controlled Lines, New York, to Mr. Ransom of the Canadian Freight Association of July 2, 1919, will be of interest:—

'Bog iron ore, although called an ore, *is, in fact, not an ore*. It is called an ore for the reason that it has a very slight available metallic content. It is principally obtained from the hills in Canada, from which it is shovelled up and is used almost exclusively as a gas purifying agent. It can, however, be refined to make a mineral paint. This paint is, however, of a very low grade.

'From the above, it would appear that bog iron ore does not compete with the ores which are reduced for their metallic content, and it would also appear that bog iron ore is of somewhat lower value than ores which are used for their metallic content.'

"That the United States railroad administration does make a distinction between iron ores used for smelting purposes and those used for other purposes is clear from the fact that the rate for iron pyrites, which is a well known iron ore, was increased 25 per cent and not 30 cents per ton. I enclose a copy of the tariff giving effect to this increase (I.C.C. N. Y. C. No. 9440) and of the cancelled tariff (I.C.C., N. Y. C., No. 7023).

"Seeing that the United States railroad administration has given an interpretation of the order confirming this company's attitude, the matter should now be beyond doubt."

The letter as above set out is in reply to and comment on a copy of the letter of the secretary of the Interstate Commerce Commission, to which reference is made below.

Prior to the correspondence from the Canadian Pacific Railway Company, as above set out, the Board, with a view to obtaining exact information on the contentious question involved, under date of July 10, 1919, sent the following letter to the secretary of the Interstate Commerce Commission:—

"General Order No. 28 of the Director General, U.S.R.R. Administration, increased the rates on iron ores (note the plural) by 30 cents per net ton. Special Permission No. 76 of this commission followed authorizing the application of the increases of the McAdoo Order on international traffic in the reverse direction from Canada.

"Bog iron ore is shipped in considerable quantities from the province of Quebec to United States destinations, and the carriers on this side have given effect to their interpretation of the Order by increasing the bog iron ore rates by 25 per cent, and complaint having been made, the contention is advanced by the carriers that the specific increase of 30 cents per ton was intended by the Order to apply only to ores for smelting, the bog variety being used for other purposes.

"Will you be good enough to inform me whether the question has come before your commission, or has arisen in another way, and, if so, what decision has been made? Will you also inform me whether bog iron ore rates between points in the United States, filed with your commission, carry the general

advance of 25 per cent, or the specific advance of 30 cents per net ton? The Board's information is that bog iron ore deposits are being worked in your country, and understands that the material moves particularly from some of the southern States."

A reply was duly received, the material points of which are as follows:—

(a) That as the question involved an interpretation of an Order of the director general, it would be more appropriate for the railroad administration to interpret the Order, at least as a primary matter.

(b) That, generally speaking, the tariffs published by carriers in the United States do not specifically name rates on bog iron.

(c) The mineral research section of the Department of the Interior advises that bog iron is properly classified as brown ore, commonly known as limonite.

(d) It was stated that advice was given to the commission by a member of the traffic section of the railroad administration that it was not aware of any tariffs which limited the increase of 30 cents per ton on iron ore to ores for smelting purposes only, and that, in terms of this information, the rates on iron ore were apparently increased by Order No. 28 to 30 cents per ton, without regard to the use of the ore.

Under date of August 23, 1919, the Board received the following letter from applicant's solicitors:—

"With further reference to the above matter, we are instructed that the United States Railroad Administration follows the decision of the Canadian authorities in applying rates on shipments to points in the United States, which originate in Canada. They will, therefore, apply either the general increase of 25 per cent or the specific increase of \$0.30 per ton to the rate on bog iron ore, according to the decision of the Canadian authorities. The Canadian Freight Association states that it is not prepared to take any action in the matter pending the disposition of it by the Board.

"The writer understood at the hearing that the Board would issue the order prayed for, i.e., that bog iron ore be subjected to the rate increase on other iron ore, which is \$0.30 per net ton unless the United States Railroad Administration had previously decided otherwise."

The understanding of the writer, as set out, that the rate was to be 30 cents per net ton, unless the United States Railroad Administration had previously decided otherwise, was not in strict accordance with the discussion which took place. By reference to the interim judgment, set out in an earlier connection, the matter stood until the Board was satisfied as to what had in fact been the arrangement adopted under the United States tariffs on the same article.

In reply, to this the applicant's solicitors were advised under date of September 11, 1919, as follows:—

"Referring to your letter of the 27th August, I am directed to state that at the hearing of this matter on the 8th of July last, it was pointed out by the Chief Commissioner that there was involved the question of tariff practice by the United States Railroad Administration, and the construction by that administration of the question whether bog iron ore was properly given the same rate as iron ores or whether it was properly placed under another rate; and it was pointed out that it would be necessary to obtain information on this point. The Board took the matter up with the United States rate authorities, but the information so far received is not conclusive. Representations are before the Board both from the railway and the applicant as to the position taken by the United States Railroad Administration in the matter. The representations so filed are contradictory; and the Board is endeavouring to obtain a final and definite statement as to the practice and construction. The matter will be dealt with as soon as this is received."

In reply to a letter to the director of the division of traffic of the United States Railroad Administration setting out the same material as was contained in the letter to the secretary of the Interstate Commerce Commission, the Board was advised, under date of September 26, by Mr. Chambers, the director of the division of traffic of the railroad administration, as follows:—

“I beg to advise that it was not our intent when issuing General Order 28 to apply the flat increase of 30 cents per ton to mineral products other than the ores commonly used by furnaces for making iron.

“We have never made any definite ruling on this subject and are without information as to how the rates on bog ore or bog iron ore were advanced, but believe it is described in most of the tariffs as bog ore and that the rates were advanced 25 per cent.”

Under date of October 6, applicant's solicitors asked for a resume of the contentions of the Canadian Pacific as to the position taken by the United States Railroad Administration in the matter. This was supplied.

Supplementary matter was submitted by the applicant's solicitors under date of November 12, 1919.

As bearing on the definition of bog iron ore, a letter was submitted from the acting director of the United States Geological Survey, the material portion of which is as follows:—

“Bog ore is a form of brown iron ore, or hydrous iron oxide, and in the canvass of the Geological Survey for statistics of iron ore no attempt is made to secure data relating to bog ore except by the general class of brown ore. It is, therefore, not possible to state the extent of the mining and use of bog iron ore. However, if it is found sufficiently pure it is usable as a source of iron.

“You are probably aware that a porous variety of limonite (brown iron ore, including bog ore) is used in the purification of illuminating gas.”

As to the use of bog iron ore in smelting, a letter was submitted from Penniman & Browne, analytical and consulting chemists, Baltimore, which, after giving some information as to iron pyrites, sets out the following paragraph regarding bog iron ore:—

“Bog iron ore is the material used in charcoal furnaces on account of its freedom from objectionable impurities. In large operations, it is not used on account of the expense and difficulty in obtaining it in sufficient quantity and because it is too soft to stand the heavy burden of the modern large furnace using coke.”

There were also submitted copies of various schedules of tariffs filed with the Interstate Commerce Commission, these being certified by the secretary of the Interstate Commerce Commission, under the seal of said commission, to be true and correct extracts from the schedules.

In summary, these may be said to cover information as to five tariffs of the Louisville & Nashville, covering rates on brown ore on intrastate movements in Alabama. The originating points shown are Champion, Ida, Jenifer, Mountain Creek, Mount Pinson, and Fort Deposit; the destination points are Alabama City, Attalla, Birmingham, North Birmingham, and Thomas.

Extracts from the Southern Railway System mineral-ore tariffs are filed. The rates in question are both intrastate and interstate. The tariffs quote rates on iron ore, but I find no reference in the extracts as given to brown ore. Extracts from the tariffs of the Alabama Great Southern Railroad quoting rates on intrastate movements in Alabama are also filed. Here again, while rates on iron ore are given, I find no reference to brown ore.

There are also filed certain schedules which are signed by the secretary of the Alabama Public Service Commission and certified under the seal of that commission as showing the C.L. rates in Alabama as specified in the exhibits. Rates on brown ore are shown between the same originating and destination points as are set out in connection with the Louisville and Nashville points above.

Details of the tariff authorities concerned not having been supplied to the Canadian Pacific Railway Company by the applicant's solicitors, request was made to the Board by the Canadian Pacific Railway Company to have these furnished. This was done, the Board, under date of November 28, 1919, writing as follows:—

"I have yours of the 19th instant, and have made a copy of the extracts from the tariffs certified by the secretary, Interstate Commerce Commission, and the secretary of the Alabama Public Service Commission, which I enclose herewith, and which give the tariff authorities for the statement that bog iron ore is being listed in the tariffs of the railroads operating in the district of the United States where bog iron ore is mined as brown ore."

Under date of January 9, 1920, the Canadian Pacific Railway Company replied as follows:—

"Referring to yours of the 31st ultimo.

"I have now had the tariffs which you sent me checked over. Where iron ore is mentioned, there is, of course, nothing further to be said with regard to the increase of 30 cents per ton, which, it is acknowledged, is the increase authorized on that commodity by the U.S.R.R.A. General Order No. 28.

"Wherever in these tariffs brown ore is mentioned the increase is also 30 cents per ton, and the question is, therefore, whether this 'brown ore' is the same as what we described as 'bog iron ore' shipped from Point du Lac or Red Mill, Que., to Baltimore, Md. Our officials have inquired of the traffic officials of the Southern Railway at Birmingham, and are advised that the iron ore described as brown ore in these tariffs moving to Alabama Tennessee and Kentucky smelting points is a smelting ore pure and simple, and is not used for any other purpose, and the traffic officials of the Louisville and Nashville Railway state that no such commodity as bog ore is known in their territory. It is at the same time well known that bog iron ore from Point du Lac or Red Mill is shipped to various destinations in the United States, not for smelting purposes, but for purifying purposes, and in some cases both to United States points and to Canadian points for paint-making purposes.

"As regards Mr. Mathewson's statement in paragraph 5 of his letter to you of the 12th November, that bog iron ore is used extensively for smelting purposes at Three Rivers among other places, our investigation shows that not one ton of Red Mill or Point du Lac ore is shipped to Three Rivers for smelting purposes, nor can we trace any such shipments having been made for years, our inquiries having gone back as far as twelve years ago.

"I wish to add that we have checked up shipments of crude bog iron ore moving to the United States points from January 1 to July 7 of this year, and find that, to the following points, carloads, as enumerated, have been shipped under the regular sixth-class rates, without our having received a complaint, which sixth-class rates had been increased automatically 25 per cent under U.S.R.R.A. General Order No. 28.

To	No. of cars.	To	No. of cars.
Philadelphia, Pa.	1	Augusta, Me.	1
Chester, Pa.	6	Weber, Ill.	2
Harbour Junction, R.I.	3	DeKalb, Ill.	1
Westfield, Mass.	1	Washington, D.C.	3
Soo, Mich.	1	Milwaukee, Wis.	1

"During the same period ten cars had been shipped to Baltimore, Md.

"Furthermore, in order to stimulate shipments of bog ore to United States points for purifying purposes, we, in some cases, applied to our American connections to be allowed to adopt on this class of business 83.33 per cent of the sixth-class rate, and this they consented to in the case of shipments to Baltimore and five other points. (See Item 265 C.P.R. Tariff E-3183, C.R.C. 3495, page 28.) It is, therefore, quite obvious that in order to maintain the relationship the present rate should be 83.33 per cent of the present sixth-class, which naturally and automatically was advanced the full 25 per cent according to General Order No. 28. If, at the present time, an application were made for a reduced rate for any reason whatever, our American connections would not consent to anything lower than 83.33 per cent of the present sixth-class rate.

"In conclusion I would repeat that we cannot find any bog iron ore moving between points in the United States under commodity rates. If there is a movement between such points, it would be only under the proper class rates advanced 25 per cent.

"As I have already stated to the Board, the bog iron ore from Point du Lac and Red Mill is used for clarifying illuminating gas and may be used for paint-making purposes, and is not a smelting ore at all.

"I submit that this is really the controlling consideration and that on this ground the complaint should be dismissed."

Summarizing the material which has been set out at length, the following conclusions are available:—

- (1) Apparently bog iron ore is not separately listed.
- (2) Scientific authorities regard brown ore as being an inclusive term covering bog iron ore and other iron ores not specified.
- (3) There is nothing before the Board showing conclusively that bog iron ore has actually moved under the brown ore rate.
- (4) Reference has been made to the bog iron ore as moving in the southern portions of the United States. The southern classification has no reference either to brown ore or to bog iron ore.
- (5) The informal understanding of the secretary of the Interstate Commerce Commission, as already referred to, is that apparently the increase of 30 cents per ton was not dependent upon the uses of the ore.
- (6) On the other hand, the general opinion of the traffic director of the United States Railroad Administration is that it was not the intention to have the increase of 30 cents per ton apply on mineral products other than to ores commonly used by furnaces for making iron; and there is, further, an expression of understanding that the rates on bog ore were advanced 25 per cent.
- (7) The supplementary submissions of applicant's solicitors do not show that bog iron ore has moved or is moving in the United States on the brown ore rates.
- (8) As set out in the letter of the Canadian Pacific, the responsible traffic officials of the railroads concerned set out, in the one case, that the brown ore referred to is a smelting ore, pure and simple, and is not used for any other purpose (in this connection the statement of Penniman & Browne, already referred to, may be borne in mind); and, in the other case, that no such commodity as bog ore is known in their territory.

In accordance with the position set out in the interim judgment, a full endeavour has been made to ascertain the intention as embodied in tariffs. The Board has received much information which is so contradictory that it is not possible to form a conclusion as to what the real intention was. The obtaining of further written submissions would, apparently, only add to the mass of contradictory statements which has accumulated.

In a matter of international rates, the jurisdiction of the Board begins at the international boundary on the movement into Canada and ends there on the movement out of Canada. This is a well-established proposition.

Continental, Prairie and Winnipeg Oil Cos., v. Canadian Pacific Ry. Co., et al., 13 *Can. Ry. Cas.*, 156, at p. 161.

Essex Terminal Ry. Co. v. G. T., M. C., Wabash and New York Central Ry. Cos., 22 *Can. Ry. Cas.*, 301, at p. 305.

At the same time, "as a matter of practice, the Board in the past has dealt with international joint tariffs having regard to the outward movement only, and, speaking generally, has not interfered in any way with any tariff properly filed under American practice applying to the joint movement into Canada. The result is that a situation which otherwise might have presented difficulties has worked out along satisfactory lines and without friction."

Essex Terminal Ry. Co., etc., ut supra, p. 304.

The Interstate Commerce Commission in *I. and S. Docket No. 1155, Heated Car Service Regulations*, 50 *I.C.C.*, 620, made reference in the examiner's report as to the United States jurisdiction terminating at the international boundary, and he so held in the matter involved. Reference may be made to *Black Horse Tobacco v. I.C.R. Co.*, 17 *I.C.C.*, 588; *Ernery & Co. v. B. and M.R.R.*, 38 *I.C.C.*, 636. In dealing with the question of international rate practice, Commissioner Harlan, who wrote the judgment which was accepted by the Commission, said at p. 622:—

"For some years joint through rates from Canadian points to interior domestic points have been regarded as being within the general control of the Canadian Commission, while joint rates from domestic points to interior Canadian points are left under the general control of this Commission. The origin and scope of this understanding between the two Commissions is explained in *International Paper Co. v. D. and H. Co.*, 33 *I.C.C.*, 270. It is also referred to in *Rates on High Explosives to G. T. Ry. System Stations*, 33 *I.C.C.*, 567, and was followed in *Aetna Powder Co. v. Wabash R.R. Co.*, 39 *I.C.C.*, 199. It has proved to be an efficient working arrangement and will not be departed from by this Commission on light grounds, although we have felt it necessary to point out that our jurisdiction extends to the service of our domestic lines performed within the United States and to the charges therefor and that where circumstances seem to make such a course necessary we would require the domestic carrier to withdraw from participation in joint through rates to and from Canadian interior points and to establish a local or proportional rate to and from the border."

It will be noted that while in agreeing in the practice, the Interstate Commerce Commission in no way recedes from the position that as a matter of jurisdiction its power to regulate the United States portion of the rate is absolute; and it has, in fact, from time to time so acted notwithstanding the informal *modus vivendi* above referred to.

The distance from Red Mill, where the shipment originates, to Baltimore is 651 miles. The movement is over the Canadian Pacific and three American lines—the N.Y.C., P. and R., and B. and O. The haul on the Canadian Pacific is 34.5 per cent of the total mileage involved.

The jurisdiction of the Interstate Commerce Commission over the haul within the United States is undoubted. What is involved is the determination of the meaning and application of a United States tariff basis, which, as a matter of reciprocity, has been made applicable on the movement from Canada to the United States. The preponderance of United States mileage is such, on the movement in question, that the United States railways interested in two-thirds of the mileage movement are concerned in the question of what is the proper scope and intent of the tariff basis concerned.

I am of the opinion that the applicants should be referred to the United States jurisdiction for their appropriate finding and remedy within that jurisdiction. There-

after, the matter as affecting the Canadian Pacific may, if any further action by way of finding and remedy is necessary, be developed before this Board on written submissions. If such further application should be made, the submissions, if any, so made, will be considered in connection with the existing record.

January 19, 1920.

The Deputy Chief Commissioner and Commissioners Goodeve and Rutherford concurred.

Re Express Franks.

File No. 29912.

MEMORANDUM BY THE CHIEF COMMISSIONER.

The question has arisen as to what rights express companies of Canada have in issuing franks, and an examination of the Railway Act, 1919, shows that, so far as tariffs and tolls are concerned, they are governed entirely by section 360, subsection 2, which provides that:—

“The Board may disallow any express tariff or any portion thereof which it considers unjust or unreasonable, and shall have and may exercise all such powers with respect to express tolls and such tariffs as it has or may exercise under this Act with respect to freight tolls and freight tariffs.”

Therefore, so far as tolls and tariffs are concerned, they are governed entirely by the law regarding freight tolls and tariffs, and, as I can find no provision in the Act specifically allowing a railway company to carry freight free of charge, an express company has no such right unless it can be found within the provisions of sections 345, 346, and 347 dealing with reduced rates and free transportation.

The whole intention of section 345 is to give to the railway companies certain rights which may be exercised under their own discretion, subject always to the provisions of this section and, in certain other cases, if approved and permitted by this Board, always provided, however, that in doing so no discrimination shall be practised.

Section 345 begins with the following words, “Nothing in this Act shall be construed to prevent,” and subclause (a) thereof allows the railway companies to carry, store or handle traffic free or at reduced rates for the Dominion or for any provincial or municipal government, or for charitable purposes, or to or from fairs and expositions for exhibition thereat.

As the word “traffic” in the definition clause includes passengers, goods, and rolling stock, I therefore take it that it would mean goods carried by an express company, and I think an express company under this clause would have a right to carry goods free of charge for the parties and purposes mentioned therein. The remainder of subclause (a) clearly refers to the carriage of passengers. Subclause (b) refers to the carriage at reduced rates of goods and effects belonging to immigrants and settlers and the baggage of commercial travellers. Subclause (c) refers expressly to the carriage of passengers, and subclause (d) allows railways and transportation companies, under which the express companies would come, to exchange passes or free tickets with other railways or transportation companies “for their officers, agents, and employees and their families, goods, and effects,” and also for the issuing of passes or free tickets to “the officers and employees of the Department of Railways and Canals, or their families, and their goods and effects.” I can find no other authority in the Railway Act by which the express companies are justified in issuing express franks.

It has been urged upon this Board that clause (c) would justify express companies in granting franks to the members of this Board as well as our officers, agents,

and employees on the ground that at least the officials of this Board would be officers, agents, or employees of the Department of Railways and Canals.

As to the members of the Board themselves, I have no doubt whatever that the express companies would not have the right to grant to us express franks, because whatever rights of free transportation we possess are given us under the provisions of section 346, which is very explicit and states that, as a matter of law, we, and such other of our officers and staff as we may determine, have the right of free transportation with our baggage, equipment, and official car.

As to all of the officials of this Board, including the members thereof, I am unable to come to the conclusion that we are in any way officers or employees of the Department of Railways and Canals. This Board is created by statute as found in the Railway Act, 1919, Sections 9 to 71 both inclusive, and, by Section 9, we are distinctly created a court of record with an official seal which shall be judicially noticed. The only section in the Railway Act which might be invoked in support of the contention that we are in any way a part of the Department of Railways and Canals is in Section 31, which provides that:—

“The Board shall, within two months after the thirty-first day of December in each year, make to the Governor in Council *through the Minister* an annual report.”

It is true that the estimates for the members and staff of this Board are presented to the House through the Minister of Railways and Canals just the same as those of the judges of the Supreme and Exchequer Courts and the staffs thereof are presented to the House by the Minister of Justice, but no person would argue that the Supreme or Exchequer Court of Canada is a part of the Justice Department of Canada.

I find, on an examination of the estimates for 1919-20, that a lump sum is included in the estimates of the Railways and Canals Department for the maintenance and operation of this Board and also an estimate for the salaries of the Board of Railway Commissioners, although it is plainly stated these are authorized by Statute. I also find that the estimates for the Judges of the Supreme and Exchequer Courts, as well as all other judges in Canada, together with a lump sum for contingencies and disbursements for the officers of the Supreme and Exchequer Courts are included in the estimates of the Minister of Justice.

I find further confirmation of this contention in the provisions of the Civil Service Act, 1918, Chapter 12, as amended by Chapter 10 of the second session of the Dominion Parliament of 1919. By this Act, for the purpose of administration thereof, the Board of Railway Commissioners means the same thing as the deputy or deputy head of a department, and the head of the department means the minister of the Crown for the time being presiding over the department, and I, therefore, take it that, for the purpose of the Civil Service Act, we are a department with the Minister of Railways as our head, just the same as he is the head of the Department of Railways and Canals. In other words, the Minister of Railways, for the time being, occupies the dual position of Minister of Railways and Canals and as Minister at the head of the Railway Commission for the purposes of the Civil Service Act.

If I am right in my contention that we are not a part of the Department of Railways and Canals, then the officers and employees of this Board would not have the right under Section 345 to receive, and the express companies would not have the right to grant, express franks.

I have already referred to the authority by which members and officials of this Board are entitled to free transportation as provided in Section 346, which also provides that members of the Senate and House of Commons of Canada, with their baggage, shall be entitled to free transportation on any of the trains of a railway company, and, as this is a right granted specifically by Statute and not a favour from the railway companies, I hold that had Parliament intended that these persons specially

referred to in Section 346 should be entitled to receive free express franks, it would have said so, and, not having done so and they not coming within any of the classes referred to in Section 345, I am forced to the conclusion that express companies have no right to grant franks to them.

I realize that for many years the express companies have granted express franks to a number of people in different parts of Canada, but I fail to find any authority therefor in the Railway Act, 1919, excepting in the few cases to which I have previously referred, namely to those persons and for the purposes set forth in the first part of clause (a) section 345, for the exchanging of passes with other transportation companies, and probably to some of the officers and employees of the Department of Railways and Canals, although in the exercise of this latter privilege, in my judgment, very great caution should be observed in the manner in which they are exchanged.

Section 347 of the Railway Act is as follows:—

“Subject to the provisions of sections three hundred and forty-five and three hundred and forty-six of this Act, no company shall hereafter, directly or indirectly, issue or give any free ticket or free pass, whether for a specific journey or periodical or annual pass, and no company shall otherwise arrange for or permit the transportation of passengers except on payment of the fares properly chargeable for such transportation under the tariffs filed under the provisions of this Act, and at the time in effect.”

Therefore, unless the express companies can find some express authority for granting express franks, or can successfully extend the provisions of section 345 and 346 beyond my interpretation, I fail to see where they are justified in granting express franks excepting as hereinbefore referred to.

My object in thus expressing this opinion is to give both to the transportation companies and the public my views in the face of the fact that the express companies, as well as all other public utilities in Canada under the jurisdiction of this Board, either have come, or are expressing an intention of coming to this Board for an increase in their rates in order that they may properly carry on the business of the country for which they were created and such being the case, while probably the amount of express matter carried on these franks forms a very small proportion of the total traffic of the express companies, yet the principle involved is just as important as though it amounted to a very large percentage thereof, and, if rates must be increased in order to place the companies in a position to properly exist, then every dollar's worth of free transportation given by means of franks must be made up by the general paying public, a policy which is entirely inconsistent with the express provisions of the Railway Act against discrimination.

OTTAWA, January 19, 1920.

The Deputy Chief Commissioner and Commissioners Goodeve and Boyce concurred.

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

Page 1, line 14.—I would suggest adding the word “specifically” before “allowing,” which is the last word in the line. This will make the meaning clearer.

I agree in the memorandum of the Chief Commissioner. At the hearing on Tuesday, the 20th instant, he made a statement as to this memorandum having been prepared. His intention is that it should issue as an interim judgment, giving an opportunity, within a reasonable time, for hearing, if such is asked for.

As what is primarily concerned is the power of the express companies to issue franks and the types of persons to whom same may be issued, it seems to me that, subject to whatever may be developed in further discussion, the express companies are

really the only people who should be given an opportunity to speak to the matter at a hearing. The recipients of franks do not receive them as a matter of right.

January 21, 1920.

Commissioner Rutherford concurred.

Re Telegraph and Telephone Franks.

File No. 29912-1.

MEMORANDUM BY THE CHIEF COMMISSIONER.

As this question has frequently been brought to my attention during the past two months, owing to certain changes in the Railway Act in 1919, I deem it my duty to give expression to my views on the rights of telegraph and telephone companies, under the provisions of the said Railway Act.

Section 375 deals explicitly with these companies and first defines what is a telegraph company, and then sets forth in a general way its chief powers, and, as all the telegraph companies in Canada come within the provisions of this section, what will apply to one will apply to all and also to all telephone companies coming under the jurisdiction of the Board.

Subsection 12 thereof is the section which makes, subject to certain reservations, the Railway Act of Canada apply to telegraph and telephone companies, and leaving out the unnecessary portions thereof, would read as follows:—

Without limitation of the generality of this subsection by anything contained in the preceding subsections the jurisdiction and powers of the Board, and, in so far as reasonably applicable, the provisions of this Act respecting such jurisdiction and powers and the other provisions of this Act (except.....) shall extend and apply to all companies as in this section defined.

Sections 345, 346 and 347 of the Railway Act are those sections dealing with reduced and free transportation, and, therefore wherever reasonably applicable, the telegraph and telephone companies possess the same rights in issuing free or reduced transportation of messages as the railway companies possess as to reduced transportation of passengers, etc.

The provisions for tolls, filing of tariffs, etc., as to these companies is provided for in subsections 2, 3 and 4 of said section 375 and, generally speaking, are entirely subject to the approval of the Board and may be revised by the Board from time to time, and, therefore I can find no provision for free carriage of messages, excepting what may be found in sections 345 and 346 as hereinbefore referred to.

Section 346 deals with members of the Senate and House of Commons, the members of this Board, and such officers and staff of the Board as we may determine.

Section 345 gives to the railway companies, and therefore telegraph and telephone companies, the right, if they so desire, of granting free transportation to persons and certain classes of persons therein specifically designated, and to such other persons as this Board may approve or permit, subject always to the provisions regarding discrimination, and section 347 expressly provides the following:—

“Subject to the provisions of sections three hundred and forty-five and three hundred and forty-six of this Act, no company shall hereafter, directly or indirectly, issue or give any free ticket or free pass, whether for a specific journey or periodical or annual pass, and no company shall otherwise arrange for or permit the transportation of passengers except on payment of the fares properly chargeable for such transportation under the tariffs filed under the provisions of this Act, and at the time in effect.”

It also provides that nothing shall affect the furnishing of free transportation where such is specifically provided by any other general act of the Parliament of Canada.

First, as to those persons who are entitled to free transportation by section 346, as these persons receive their right to free transportation by law, I take it they are entitled to only what is specifically mentioned therein, and in general words this includes free transportation to members of the Senate and House of Commons, with their baggage, and free transportation to members of this Board and such officers and staff of the Board as we may determine, with our baggage, equipment, and official car, and I am unable to convince myself by any course of reasoning that the provisions of section 345, being the section stating what the railway companies may do on their own initiative, could be held reasonably applicable to this section, and, therefore, the persons mentioned therein are not entitled to receive telegraph and telephone franks, but I have not the same view regarding those persons referred to in section 345 because, as that provides what the railway companies may do in the granting of free or reduced transportation, I feel it reasonably applicable that telegraph and telephone companies have the same rights of granting free transportation for messages that the railways would have in granting free transportation to the parties therein referred to.

The opinion which I have already expressed regarding the provisions of section 345, with respect to express companies applies very largely to franks by telegraph and telephone companies with this addition that the exchange of telegraph, telephone, and cable franks is expressly provided for with other telegraph and telephone companies, their officers, agents, and employees, and it is my opinion that in carrying out the privileges granted the telegraph and telephone companies by the Act very great care should be exercised in the distribution of franks, because an application is now pending before this Board by the telegraph companies of Canada, asking for a very substantial increase in their rates amounting to from 30 to 35 per cent of the rates now in force and any revenue lost by the giving of franks must be made up by the remainder of the community. Holding these views, I consider it my duty to express them as I have done, and trust that the telegraph and telephone companies will be guided, as far as possible, by the interpretation of the Railway Act as herein set forth.

F. B. CARVELL,
Chief Commissioner

OTTAWA, January 17, 1920.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

I agree in the Memorandum of the Chief Commissioner.

At page 1, line 29, after the word "and," being the first word in the line, I would suggest the addition of the words "not being excluded." This will make the meaning clearer.

At the hearing on Tuesday, the 20th instant, the Chief Commissioner made a statement as to this memorandum having been prepared. His intention is that it should issue as an interim judgment, giving an opportunity, within a reasonable time, for hearing, if such is asked for.

As what is primarily concerned is the power of the telegraph and telephone companies to issue franks and the types of persons to whom same may be issued, it seems to me that, subject to whatever may be developed in further discussion, the telegraph and telephone companies are really the only people who should be given an opportunity to speak to the matter at a hearing. The recipients of franks do not receive them as a matter of right.

January 21, 1920.

Commissioner Rutherford concurred.

Application of the Grand Trunk Railway Company for an Order rescinding Order No. 5885, dated November 22, 1908, and ordering the Kitchener and Waterloo street railway to pay to the G.T.R. Co. 50 per cent of the wages of the watchmen at the diamond crossing of the Kitchener and Waterloo railway and the G. T. R. at King street, Kitchener, Ontario.

Case 1252.

Report of A. S. Goodeve, Commissioner.

In accordance with instructions issued by the Chief Commissioner under subsection (b) of Clause (1) of Section 12, at a meeting of the Board held on December 30 last, the undersigned was authorized to take evidence at Kitchener, Ontario, in connection with the application of the Grand Trunk Railway Company for an Order rescinding Order No. 5885, dated December 22, 1908, and ordering that the Kitchener and Waterloo street railway pay the G.T.R. Company 50 per cent of the wages of the watchmen at the diamond crossing of the Kitchener and Waterloo street railway and the G. T. R. at King street, Kitchener, Ontario.

I proceeded to Kitchener Monday, January 12, where a hearing was held in the Court House, when Mr. W. C. Chisholm appeared for the Grand Trunk Railway Company, Mr. A. Scellen for the Kitchener Light Commission, and Mr. G. Bray for the City of Kitchener.

The Order complained against by the Grand Trunk Railway Company was based on an Order of the Privy Council, dated October 10, 1895, in which is the following clause:—

“The Berlin and Waterloo Street Railway Company to bear and pay the whole cost of providing and maintaining the said derails, diamond crossing and home signals, and their attachments so required, and the necessary oil, electric or other light (including lamps); and any increased cost of operating the protective appliances at the said crossing that may be entailed in the future by the carrying out of this Order beyond the cost of protection at the said crossing prior to the use of this crossing by the electric cars of the said street railway company.”

At the time of the issuing of this Order the Grand Trunk Railway Company employed a watchman paying him \$1.25 per day whose hours of duty were from 7 a.m. to 7.30 p.m., and he was entirely paid by the Grand Trunk Railway Company. After the crossing of the tracks of the Grand Trunk by the street railway, the hours of the watchman were extended to 11 p.m., and he was paid for this additional time by the Street Railway Company at the rate of 25 cents per day, except Sunday.

In May, 1905, the Street Railway Company put on another car due to leave Waterloo at 11.30 p.m.—they also crossed earlier in the morning at 6.30 a.m. This would have made between seventeen and eighteen hours duty for one man.

The matter was taken up with the manager of the Street Railway Company, when it was suggested by him that the Grand Trunk Company permit the Street Railway employees to handle the signals after the Grand Trunk watchman went off duty, or, that the Grand Trunk should put on two men in 12-hour shifts, providing the Street Railway Company pay the costs over and above the amount the Grand Trunk then paid for the services. They failed, however, to reach an agreement along these lines, with the result that the street railway manager disconnected the derail connections and spiked the derails.

The matter having been brought to the attention of the Board of Railway Commissioners, the chairman ordered the Street Railway Company to at once replace the derails; that the Grand Trunk should afford the protection required by the order, and the Street Railway Company must pay the increased cost, as set out in the order. Bills were presented to the Street Railway Company, payment of which were declined. The Grand Trunk then brought suit and the action was afterwards settled on the basis of Order No. 5885.

It will be noted in this order that the Berlin and Waterloo Street Railway Company, paid the Grand Trunk the sum of 85 cents per day for the period of time from the 12th December, 1905, to the 1st of May, 1907, and that the Light Commission of the Town of Berlin (now the City of Kitchener) paid to the Grand Trunk the sum of 90 cents per day from the 1st day of May, 1907, the Light Commission of the Town of Berlin (now the City of Kitchener) having taken over the operation of the street railway from that date.

The first Order, No. 5661 of November 10, 1908, fixed the amount to be paid by the Light Commission at \$1.25 per day, but after the issuance of that order a statement of wages paid by the Grand Trunk was furnished the Board which showed that the wages were somewhat less than had appeared at the hearing, when Order No. 5885 of December 22, 1908, was issued reducing the amount to be paid by the Light Commission from \$1.25 to 90 cents per day. This rate has continued since, and is still in effect.

Mr. Chisholm points out in his argument that the wages for both the day and night watchmen have increased very materially since the issuance of this order. In July, 1910, the wages were changed to \$1.35 and \$1.25 for the day and night watchmen respectively. In September, 1910, the night watchman was increased to \$1.35. In November, 1912, both of these men were increased to \$1.50. On May 1, 1917, they were increased to \$1.70 per day; and on May 1, 1918, to \$2 per day. On August 1, 1918, General Order No. 27 (commonly called the McAdoo Award) increased their wages to \$2.27 per day; and on September 1, 1918, under Wage Agreement No. 2 they were increased to 38 cents per hour, and there are now three men at the crossing working eight hours per day each. In addition to this, it was pointed out by Mr. Fish, superintendent of the Grand Trunk, that it was necessary to arrange for a fourth man in order to save time and a half over-time, as under Wage Agreement No. 2 the men work six days a week, and when they worked the seventh day they got time and a half.

Mr. Scellen, on behalf of the Kitchener Light Commission, while admitting that the question as to the superior or dominant rights as between the Grand Trunk Railway and the Light Commission was decided in the judgment of Mr. Commissioner Boyce that as between the city itself and the railway that question was not in issue at that time, and was not taken into consideration. I do not think, however, there is anything in that contention, as that point was fully covered in the judgment of the late Chief Commissioner Mabey, and was gone into very carefully, as recited and confirmed in the judgment of Mr. Commissioner Boyce.

Mr. Bray, who appeared on behalf of the city of Kitchener, when asked if he had any argument to offer in this connection, stated his was merely a watching brief and he had nothing to add.

The whole question, therefore, resolves itself into what is a fair division of costs under the changed conditions, and in this connection it was argued by Mr. Scellen that at the time the original order was issued the Grand Trunk Railway Company was maintaining a watchman for 12½ hours in the day at its own expense, and that the street railway only operates its cars 18½ hours per day, and that the maintaining of a watchman beyond those hours was of no benefit to it. He argued further that the necessity for an all-night watchman was not due in any way to the street railway but has arisen owing to the greatly increased traffic on the Grand Trunk, and pointed out that when the order of the Privy Council was made in 1895 the town of Berlin (now Kitchener) had only a population of 7,000, while to-day it was a city with a population of some 22,000 people.

In reply to this it was stated by Mr. Chisholm that there is not by any means the amount of through traffic that there was when this diamond was first put in. Since the Grand Trunk got its double track it sends a great many of its through trains via the southern division which has taken off a lot of the main line traffic on this division. That the switching traffic is done between 6 a.m., and 6.30 p.m. There is no change in operating conditions except the increased cost of labour.

Undoubtedly, owing to the largely increased population, and the development and growth of Kitchener, as an industrial centre, the traffic over this crossing, both on the highway and the railway, has very materially increased. I do not see, however, that this has any bearing on the question of the division of costs, the principles of which have been decided in judgments of the Board already issued.

Having in mind, therefore, the order of the Privy Council, and the fact that it is necessary in the public interest that this crossing should be protected both day and night; and in view of the evident intention of the Order of the Board to place the costs of protection of this crossing, other than that borne by the Grand Trunk Railway at the time of the issuing of the Order of the Privy Council, upon the street railway, and the further fact that now, owing to conditions over which the Grand Trunk Railway Company has no control, it is necessary to divide the operation of this plant into three shifts of 8 hours each, all of which are paid the same wages, I am of the opinion that a fair division of the costs would be: 50 per cent to be borne by the Grand Trunk Railway Company, and 50 per cent by the Kitchener Light Commission.

I may say, in this connection of dividing the amount by percentages, it was agreed at the hearing by both representatives of the Grand Trunk and the Light Commission that any division to be made should be placed on a percentage basis rather than on a fixed amount, owing to changes that take place from time to time in wages and other costs.

I think this should be retroactive and date from August 1, 1918, when, under General Order No. 27 (commonly called the McAdoo Award) wages were increased to \$2.27 per day.

In arriving at the above division of costs I have not been unmindful of the fact that at the time Order No. 5885 was issued there was a difference in the amount to be paid by the Light Commission as compared with the amount paid by the Grand Trunk Railway, which was apparently 90 cents as against \$1.25, but it would be unfair to place the division upon this basis as this difference was due to the difference in wages paid at that time to the night watchman as compared with the day watchman. This is made quite clear by the fact that Order No. 5661 fixed the amount to be paid by the Light Commission at \$1.25, which was afterwards reduced on the ground that it had been shown that this was more than the amount actually paid out by the Grand Trunk Railway, while to-day the same rate per hour is paid to all the men.

The Chief Commissioner, the Assistant Chief Commissioner, and Commissioner Boyce concurred.

OTTAWA, January 29, 1920.

Application of the residents of Redland, Alta., and vicinity for the appointment of a station agent at Redland.

File No. 4205.221.

JUDGMENT.

The CHIEF COMMISSIONER:

This case was heard at the sittings in Calgary on the 27th of November last, and at the close of the hearing Mr. Temple was to furnish the Board with a statement of returns from December 1, 1918, to December 1, 1919, and, if the returns showed \$15,000 as a revenue, a station agent was to be appointed. The returns now furnished show over \$18,000 revenue, of which \$2,132 is passenger revenue, and, therefore, following out the understanding, an order will issue directing the C.N.R. to appoint a station agent at Redland, in the province of Alberta.

OTTAWA, February 3, 1920.

The Assistant Chief Commissioner and Commissioner Rutherford concurred.

ORDER No. 29288.

In the matter of the complaint of the United Grain Growers, Limited, of Winnipeg, Man., that the Canadian National Railways have refused compensation for loss occasioned by delivery to Thunder Bay Elevator instead of Paterson's Elevator, as directed, car C.N.R. 44458, grain, ex Deepdale, Man., December 5, 1918, consigned to the complainants in care of the terminal elevator of the Canadian Northern Railway Company, Port Arthur.

File No. 29257.

THURSDAY, the 22nd day of January, A.D. 1920.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Winnipeg, November 15, 1919, the complainants and the railway company being represented at the hearing, and what was alleged; and upon its appearing that what is involved is a loss and damage claim, in which the Board is without jurisdiction,—

It is ordered: That the complaint be, and it is hereby, dismissed.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 29301.

In the matter of the application of the Grand Trunk Railway Company of Canada, hereinafter called the "applicant company," under section 188 of the Railway Act, 1919, for approval of the location and detail plans of station proposed to be erected at Hawtrey, in the township of South Norwich, county of Oxford, and province of Ontario, on file with the Board under file No. 29642.

THURSDAY, the 22nd day of January, A.D. 1920.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of the Chief Operating Officer of the Board, and reading what is filed on behalf of the township of South Norwich,—

It is ordered: That the location and detail plans, dated Montreal, 1918, and July 10, 1919 (revised January 7, 1920), respectively, showing station proposed to be constructed by the applicant company at Hawtrey, in the township of South Norwich, county of Oxford, and province of Ontario, on file with the Board under the said file No. 29642, be, and they are hereby, approved.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 29293.

In the matter of the application of the Toronto Suburban Railway Company, herein-after called the "applicant company," under section 330 of the Railway Act, 1919, for approval of its Standard Freight Tariff C.R.C. No. 1.

File No. 29851.

FRIDAY, the 23rd day of January, A.D. 1920.

S. J. McLEAN, *Assistant Chief Commissioner.*A. S. GOODEVE, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon its appearing that the applicant company's wage schedule is substantially that of the Canadian National Railway System, of which the said railway forms a part; and in virtue of which the Canadian National Railways were permitted, by Order in Council, P.C. 1863, to increase their rates, the tariffs submitted for approval being identical with that of the Canadian National Railway System for similar distances,—

It is ordered: That the said Standard Freight Mileage Tariff C.R.C. No. 1 be, and the same is hereby, approved; the said tariff, together with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 29309.

In the matter of the application of W. E. Campbell, Secretary, Canadian Freight Association, Winnipeg, Man., on behalf of the railway companies operating in Western Canada, for an Order authorizing such railway companies to increase their charge from \$3 to \$4 per car for lining cars used for the carriage of flaxseed in bulk.

File No. 25037.

MONDAY, the 26th day of January, A.D. 1920.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Winnipeg, November 15, 1919, the applicant, the North West Grain Dealers' Association, the Canadian National Railways, the Canadian Pacific and Grand Trunk Pacific Railway Companies and certain shippers interested being represented at the hearing, and what was alleged; and upon the consent of the representatives of the said shippers and of the North West Grain Dealers' Association,—

It is Ordered as follows:

1. That the said railway companies be, and they are hereby, authorized to increase their charge for lining cars used for the carriage of flaxseed in bulk from \$3 to \$4 per car, subject to the conditions set out in the Order of the Board No. 23894, dated June 22, 1915.

2. That the Order of the Board No. 25956, dated March 22, 1917, made herein, be, and it is hereby, rescinded.

F. B. CARVELL,

Chief Commissioner.

ORDER No. 29308.

In the matter of the application of the Canadian Northern Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276, sub-section 7, of the Railway Act, 1919, for leave to carry traffic over that portion of its line of railway between Victoria, mileage 1.80, and mileage 52.5:

File No. 29893.

TUESDAY, the 27th day of January, A.D. 1920.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading the reports of an Engineer and the Chief Engineer of the Board:—

It is Ordered: That the applicant company be, and it is hereby, granted leave to carry traffic over the said portion of its line of railway from the junction with the Patricia Bay Line, mileage 1.80, to mileage 52.5, in the province of British Columbia; provided that the operation over the line between mileage 26.5 and mileage 52.5 shall not exceed fifteen miles an hour, and that the speed of trains passing over crossings on the said line between mileage 26.5 and 52.5 shall not exceed ten miles an hour.

And it is further ordered: That the Order of the Board No. 29282, dated January 19, 1920, made herein, be, and it is hereby, rescinded.

F. B. CARVELL,
Chief Commissioner.

GENERAL ORDER No. 282.

In the matter of the General Order of the Board No. 25, dated January 25, 1909, prescribing the lighting systems to be used on each and every car requiring lighting on the railway, or portion of railway, operated by every railway company subject to the legislative authority of the Parliament of Canada.

File No. 29449.

THURSDAY, the 29th day of January, A.D. 1920.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon reading what is filed on behalf of the Canadian Pacific, Grand Trunk, and Grand Trunk Pacific Railway Companies, the Wabash and Michigan Central Railroad Companies, and the Canadian National Railways, and the report and recommendation of the Mechanical Expert of the Board, concurred in by its Chief Operating Officer,—

It is ordered: That the said general order of the Board No. 25, dated January 25, 1909, be, and it is hereby, amended by adding after subclause (3) of clause (h), paragraph 3, the following, namely:—

“4. That in all cases of derailments or accidents to passenger cars lighted with Pintsch gas or commercial acetylene, the supply of gas must be shut off, if possible, by closing the stud valves in storage tanks underneath the body of the car. Arrangements must be made to place a key securely in the gauge box underneath the car where it will readily be accessible. Instructions must be issued to train and wrecking crews to govern this matter, so that there will be no misunderstanding in case of accident.”

F. B. CARVELL,
Chief Commissioner.

ORDER No. 29312.

In the matter of cars to be supplied at elevators at Fort William and Port Arthur, in the province of Ontario, for the carriage of grain to Eastern Canada for domestic consumption.

File No. 18705.435.

FRIDAY, the 30th day of January, A.D. 1920.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

HON. W. B. NANTTEL, K.C., *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

In pursuance of the powers conferred upon the Board by section 312 of the Railway Act, 1919, and the Order in Council, P.C. 1589, dated July 31, 1919, as continued in full force and effect by Act of the Parliament of Canada, 10 George V, chapter 9, and of all other powers possessed by it in that behalf,—

It is ordered as follows: That on Monday, the 2nd day of February, 1920, and on each succeeding Monday until otherwise ordered by the Board the Canadian Pacific Railway Company provide at least one hundred and twenty-five (125) cars and the Canadian National Railways at least fifty (50) cars at the elevators at Fort William and Port Arthur, in the province of Ontario, for the receipt, handling, and carriage of grain, other than wheat, also flaxseed, for domestic use in Canada; the said cars to be allocated in proportion to the cars ordered for which the necessary documents have been surrendered.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 29327.

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "applicant company," pursuant to the General Order of the Board No. 119, for authority to remove its station agent at Cheviot, in the province of Saskatchewan.

File No. 19432.

TUESDAY, the 3rd day of February, A.D. 1920.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the rural municipality of Blucher, No. 343, and the Saskatchewan Grain Growers' Association; and upon the report and recommendation of an Inspector of the Board, concurred in by its Chief Operating Officer,—

It is ordered: That the applicant company be, and it is hereby, granted leave, pending further order, to remove the station agent at Cheviot, in the province of Saskatchewan, subject to and upon the condition that a caretaker be appointed to see that the station is kept clean, and heated and lighted when necessary, for the accommodation of passengers on the arrival and departure of trains, and to care for L.C.L. freight and express shipments.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 29336.

In the matter of cars to be supplied at elevators at Fort William and Port Arthur, in the province of Ontario, for the carriage of grain to Eastern Canada for domestic consumption; and the order of the Board No. 29312, dated January 30, 1920, made therein.

File No. 18705.435.

THURSDAY, the 5th day of February, A.D. 1920.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. W. B. NANTEL, K.C., *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon its being represented to the Board that the effect of the order allocating the cars upon the surrender of the necessary documents is to exclude users of private elevators which do not issue warehouse receipts from any benefit thereunder,—

It is ordered: That the said Order No. 29312, dated January 30, 1920, be, and it is hereby, amended by striking out the words "for which the necessary documents have been surrendered," at the end thereof.

F. B. CARVELL,
Chief Commissioner.

CIRCULAR No. 187.

File 1750-18

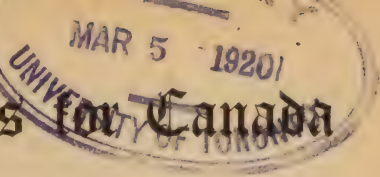
February 10, 1920.

Special Orders dispensing with Standard Clearances.

It has been decided by the Board that in future wherever the standard clearances provided by General Orders of the Board are relaxed upon special conditions, the Order granting the less-than-standard clearances will be subject to the condition that the applicant company undertake to keep its employees off the tops and sides of cars (as the particular case may call for) when operating on the sidings or tracks and so long as the said undertaking shall be performed.

By Order of the Board.

A. D. CARTWRIGHT,
Secretary, B.R.C.



Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. IX

Ottawa, March 1, 1920

No. 24

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Re Dropmore Station, Manitoba, Canadian National Railways.

JUDGMENT.

File No. 26886.

MR. COMMISSIONER BOYCE:

The decision of the question involved depends upon the facts and upon the application of the rules of the Board to those facts, rather than upon calculations based upon monthly or quadri-monthly traffic. Order No. 25154, dated July 13, 1916, issued under the authority of General Order No. 54, clause 5, required the railway company to appoint a station agent at this point, during the months of September, October, November and December. Subsequent to the Order, the Grain Growers' Association, of Dropmore, asked that the agent be made permanent. The railway company submitted statement of the traffic, showing total revenue at this station of \$16,008. The railway company having closed the station, after some correspondence upon the application just above mentioned, wrote to the Board, under date March 12, 1918, from which I quote the following statement: "We have decided to open this station immediately and keep it open, unless the earnings drop to an extent which would warrant our applying to the Board for the station to be closed. An agent will be placed at Dropmore on the 11th instant." Further, and under date March 16, 1918, the railway company wrote the Board: "It is the intention to keep Dropmore station open just as long as the earnings warrant." Under date March 26, the Board was advised by its Inspector that a station agent was appointed at Dropmore on the 13th instant. The Board, thereupon, under date April 2, advised the applicants of the intention of the railway company to keep the station open so long as the earnings warranted. On May 16, 1918, the railway company applied to the Board for authority to close the station. It is to be observed that by the action of the railway company, as above indicated, the temporary, or grain agent, appointed under Order No. 25154, became a permanent or regular agent, and, therefore, subject to the provisions of General Order No. 119. The application of the railway company to close the station was set down for hearing at Winnipeg, on June 15, and was refused by Order No. 27333, dated June 22, 1918. Notwithstanding that Order, the railway company did not appoint a regular station agent here immediately, but wrote, under date August 14, 1918, treating Order No. 25154 as being still in force as regards temporary grain agent. Under date September 3, 1918, the railway company was written to, stating that as receipts at this station exceeded \$15,000 per annum, the Board did not see why the company did not have a regular agent and the station kept open at all times. The station was re-opened September 10, temporarily; the railway company still contending that Order No. 25154 applied. The station was closed December 31, 1918, and the matter was again

taken up by the Board with the railway company. The earnings for the year 1918 were given by the railway company as \$18,369. On May 30 there was a ruling of the Board that a case for the removal of the agent had not been made out. This was communicated to the railway company on June 2, 1919, and the railway company's reply still contended that Order No. 25154 should govern the situation, and asking that the Board would allow it to stand until October 1 next. A temporary agent was again appointed on September 1, and removed December 31, 1919. On January 19, 1920, the railway company wrote the Board, in answer to the Board's enquiry, that they had instructed that Dropmore station be kept open until further advised. Under date January 26, 1920, the railway company advised the Board that the earnings at Dropmore station for 10 months ending October 21, 1919, amounted to \$18,484, which would be an average of about \$22,000 for a year. It is clear that Order No. 25154 no longer governs the situation, because the railway company voluntarily elected, in March, 1918, to appoint a permanent agent, subject to the application to the Board to close the station, and that the dismissal of its subsequent applications placed upon it the obligation to retain this as a regular agency station with a permanent agent appointed, and that is the position of the present application.

I would point out, in connection with the application, that the provisions of General Order No. 119, requiring service of notice to a local municipality, did not appear to have been complied with, and, in any event, that the earnings are quite sufficient to justify the retaining of a permanent agent.

I would suggest, in order to remove any doubts in the future, that an Order be declaring this station to be a regular station agency, and requiring the railway to maintain a regular agent station there, and dismissing its application to be relieved of that obligation.

OTTAWA, February 4, 1920.

The Assistant Chief Commissioner and Commissioner Goodeve concurred.

ORDER No. 29366.

In the matter of the General Order of the Board No. 119, dated January 31, 1914, and the application of the Canadian Northern Railway Company, hereinafter called the "applicant company," for authority to maintain Dropmore station, in the province of Manitoba, as a non-agency station.

File No. 26886.

TUESDAY, THE 10TH DAY OF FEBRUARY, A.D. 1920.

HON. F. B. CARVELL, K.C., Chief Commissioner.

S. J. McLEAN, Asst. Chief Commissioner.

A. S. GOODEVE, Commissioner.

A. C. BOYCE, K.C., Commissioner.

Upon reading what is filed in support of the application,—

1. *It is Ordered and Declared:* That Dropmore is a regular agency station, and that the Canadian Northern Railway Company be, and it is hereby required to maintain a regular station agent at the said station; and that the application of the said railway company to maintain the said station as a non-agency station be, and it is hereby, refused.

2. *It is Further Ordered:* That the Order of the Board No. 25154, dated July 13, 1916, be, and it is hereby, rescinded.

F. B. CARVELL,
Chief Commissioner.

Application for an Order requiring the Canadian Pacific Railway Company to build a new station at Carmichael, Sask.

File 29636.

JUDGMENT.

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

Complaint is made about the inadequate passenger accommodation supplied in the station at Carmichael, Sask. It is stated that about four years ago, before the Canadian Pacific Railway Company had an agent at the station in question, the size of the station was 28 feet by 9 feet, and that with the installation of an agent there was a sub-division of this space. It is stated that the general waiting-room has seating accommodation for 6 people, and very often "there are 16, 18 or 25 people in this one waiting-room." It was stated by a representative of the village that these were people who were travelling on trains or, perhaps, waiting for friends to come off the trains.

As bearing on the passenger business to and from this point, certain statistics were asked for and have been supplied. For the year ending August, 1919, the passenger receipts amounted to \$2,075.

The following statement was made by the Chief Commissioner at the hearing (vol. 320, pp. 12532-33):—

"THE CHIEF COMMISSIONER: There is not much doubt that the accommodation is not exactly what people would like to have at this station; it is also patent that the amount of business done is not very great.

"We think there ought to be better accommodation and we want the railway company to file with us, before the 1st of January, a statement of the number of passengers and the average fares—if they can obtain it, as I presume they can; say, per week over a period of six months back from the last day of November. That is, the most recent six months.

"Then we would also like them between now and the first day of January to show cause why they should not be compelled to construct this station. It must be plain to every person that the accommodation is very poor. Even with the limited amount of space at their disposal it seems to us that some arrangement might be made so that people might be more comfortable in the general waiting-room than they are at the present time. After we get this information, we will know what sort of judgment to render."

Further material has been submitted regarding the passenger business. For the six months ending October 31, 1919, the statement shows 627 fares and \$931.50 revenue on the movement out from Carmichael, or an average fare per passenger of \$1.49, which, at the rate of 3.45 cents per mile, would represent an average of 43 miles. On the movement in, there were 276 fares, with a revenue of \$228.10, or an average passenger fare of 83 cents, which, at the rate of 3.45 cents per mile, would mean an average journey of 24 miles.

Putting the material in a summary way, we have the following:—

	Passengers per day.	Average fare.	Average journey.
Traffic out (6 months).....	3.5	\$1 49	43 miles.
Traffic in (6 months).....	1.5	0 83	24 "

If the figures were differentiated as between single trips and round trips, it might be that the average fare per mile being less on round trips the average

journey, as shown, would be somewhat longer. As bearing on the mileages, the average of 43 miles from Carmichael out would show movements from Swift Current of 43.3 miles, or Maple Creek of 41.2 miles. Reference to the average journey of 24 miles in has been made; the two points which check against this are Webb 22.4 miles, and Piapot 23.7 miles.

While the accommodation provided for passenger traffic is not up to the standard, at the same time it has to be noted that the passenger business which was referred to as showing the measure of the necessity for improved station accommodation is relatively small in volume and limited in number of passenger movements per day.

The next higher standard of station accommodation would cost, as the Board was advised at the hearing, about \$7,500. On account of increased costs of labour and material, this is at least 66 per cent higher than it would have cost under pre-war conditions.

The passenger receipts for the year ending August, 1919, have been given as \$2,075. If the passenger receipts for the six months ending October, 1919, amounting to \$1,159.60, are taken as characteristic, this averaged on a 12-months basis would give earnings of \$2,319.99; that is to say, the next standard of station accommodation would cost more than three times the gross passenger business per year at present available.

It may be that under improved railway conditions as to cost, it would be justifiable to order such a standard; at present, it is not.

The inside measurement of the station is 28 feet 8 inches by 9 feet. This is sub-divided into a waiting-room 12 feet 4 inches by 9 feet; an office 10 feet 4 inches by 9 feet; and an express-room of 6 feet by 9 feet.

On the facts as developed, passenger accommodation is necessary in the waiting-room, and such rearrangement and reconstruction, if necessary, should be made as will afford increased waiting-room space. The railway company should file within thirty days a plan showing a waiting-room 22 feet 8 inches by 9 feet; and the work should be completed by June 1.

February 4, 1920.

The Chief Commissioner and Commissioners Goodeve and Rutherford concurred.

ORDER No. 29373.

In the matter of the application of the council of the village of Carmichael, Sask., for an Order directing the Canadian Pacific Railway Company to build a new station at Carmichael.

File No. 29636.

MONDAY, the 16th day of February, A.D. 1920.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Regina, December 1, 1919, the village of Carmichael and the railway company being represented at the hearing, and what was alleged; and upon reading the report of an Inspector of the Board,—

It is ordered: That the Canadian Pacific Railway Company be, and it is hereby, required to rearrange, or reconstruct if necessary, the present waiting-room at Carmichael station, in the province of Saskatchewan, the said railway company, within thirty days from the date of this Order, to file a plan with the Board showing a waiting-room 22 feet 8 inches by 9 feet; and the work to be completed by the 1st day of June, 1920.

F. B. CARVELL,
Chief Commissioner.

Complaint re increase in prices of 1,000-mile railway tickets or books on Canadian Railways.

File 26022.3.

RULING OF THE BOARD.

The former basis of round-trip fares, viz., $2\frac{1}{2}$ cents was arrived at in the following way:—

The round-trip rate for the ordinary fare on the former 3-cent basis was obtained by deducting $\frac{1}{8}$ from the sum of the individual rates; that is to say, on the ordinary passenger movement there was a 5-cent charge for round trip of one mile. In the case of the 1,000-mile tickets, the single fare was arrived at by dividing this 5-cent charge by .2; that is to say, on a one-way trip the user of the 1,000-mile ticket was given the same rate treatment as if he were making a round trip.

When the 15 per cent increase was allowed on ordinary passenger fares, this brought the rate up to 3.45 cents per mile for the ordinary fare. Effective February 1, 1919, the railways filed tariffs providing that the basis of round-trip fares on ordinary passenger tickets should be arrived at by deduction of $\frac{1}{10}$ instead of $\frac{1}{8}$ as formerly.

The matter was gone into by the Board at a hearing and the Board held, in its decision of September 9, 1919, that the railways had successfully borne the burden of proof placed on them and that the Board was not justified in disallowing the round-trip arrangements involved; that is to say, it was justifiable to figure out the round-trip rate on the basis of a deduction of $\frac{1}{10}$ instead of $\frac{1}{8}$ as formerly.

The 1,000-mile ticket rate having been figured per mile on the basis of one-half the round trip regular passenger rate, it follows that with the adoption of the 10 per cent deduction the situation is as follows: Single fare for one-way movement both ways, 6.9 cents; deduct 10 per cent round-trip fare, leaving a total of 6.21. Divide by two in order to get the appropriate one-way fare on 1,000-mile ticket and the result is 3.1. It will thus be seen that the 1,000-mile ticket being related in basis to the standard passenger rate, the increase as made is not illegal.

OTTAWA, February 11, 1920.

Application of the city of St. Boniface, Man., for an order directing and ordering the Canadian Pacific Railway Company to remove immediately any and all lines of railway improperly, illegally, and without due and lawful authority laid by the Canadian Pacific Railway Company, or any person or corporation on its behalf, on or near rue Messier, in the city of St. Boniface, either on the property of the railway or on the property of the city or any other person or corporation.

File 16028.

JUDGMENT.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

In the application as launched, request was made that the Canadian Pacific Railway Company be directed to remove such tracks as has been laid by it without lawful authority on or near rue Messier, in the city of St. Boniface, Man. In the course of

the hearing, Mr. Blackwood, who appeared for the city of St. Boniface, withdrew this portion of the application, it being recognized that at the point in question no right of crossing exists.

The application is one which is primarily concerned with the affording of access to the plant of the Western Wheel Foundry Company. It was testified on behalf of this company that the general industrial situation had been carefully canvassed by it in regard to locations, and that the location which it now possesses adjacent to the point where the crossing is asked for was chosen only after careful balancing up of the industrial advantages of different sites.

The Canadian Pacific Railway Company at the hearing objected strongly to the crossing being granted, and in this connection pointed out the heavy travel which existed over the tracks across the point where the proposed crossing would be located. One of these is the main line to St. Paul and Minneapolis, and another is the main lead which runs down to serve many industries as well as the stockyards.

The Canadian Pacific proposes a diversion of rue Messier to a point approximately 330 feet north, and then running west across the tracks to connect with Archibald street. Rue Plinguet is 1,200 feet from the proposed crossing on rue Messier. The diversion, as proposed, would bring the crossing within 850 feet of rue Plinguet.

The Canadian Pacific plan dated November 14, 1919, shows, at the proposed point of crossing, six tracks within the right of way. These consist of:—

(a) Three tracks running southwesterly across the southern boundary of the proposed street. From these tracks, other leads run off. From the plan, two of these tracks show crossings serving the plant of the foundry company. The other track runs southwesterly beyond the plant in question.

(b) Two main line tracks; and

(c) One through siding. The through siding is 1,500 feet long, 550 feet of it being south of the southern boundary of proposed crossing. There are no spur tracks leading off the portion of this siding south of proposed crossing. North of the proposed crossing there are two spur tracks—one for the Continental Oil Company, 850 feet from the point of crossing, and one for the North West Grain Dealers, 300 feet from the point of crossing. The spur track serving the North West Grain Dealers is 700 feet long, some 310 feet of it being on the property itself. It crosses rue Messier 70 feet west of the western boundary of the right of way.

At the diverted crossing there are in place four tracks, viz., the spur track to the North West Grain Dealers, the two main tracks, and the track from which the leads run southwesterly across the southern boundary of the proposed crossing as already referred to. That is, the switching movements referred to would be common to both crossings, and apparently the train movements at the diverted crossing would be as great as at rue Messier.

In connection with the tracks in place at rue Messier to serve the foundry company, there is a switch in the middle of the proposed crossing. At the hearing, the foundry company stated its willingness to bear the expense of moving the switch away from the point where the proposed crossing would be, thus enabling moving the tracks closer to the plant; and also to bear the cost of such rearrangement.

This has been checked by the Board's Engineer and a plan has been submitted dealing with the south switching tracks already referred to as running southwesterly. Under this plan, the switch can be taken off the street; there will be only one crossing for the tracks serving the foundry company, the lead therefrom being moved southwest of the crossing and, in addition, the longer track running southwesterly past the plant of the applicant will run off from the rearranged lead to the applicant company's plant instead of having a separate crossing as at present. This rearrangement will leave four tracks within the right of way, the same number as at the proposed diverted crossing.

The crossing is necessary. At the hearing, the attention of counsel for the city of St. Boniface was fully directed to the elements of danger in connection with the proposed crossing, and to the burden in respect of protection which the municipality would have to assume.

In various cases where a highway has been opened up across the tracks of a railway and the question of protection is one which it has not been necessary to deal with at the outset, no pronouncement has been made in the order on the division of cost, thus leaving it open to the Board, at a later date, to consider the matter from the standpoint of the respective volumes of traffic on the highway and on the railway, and to deal with the matter accordingly.

A different situation exists where it is recognized that features of danger will attach to the crossing from its inception. In *Town of St. Pierre, Que., vs. G.T.R. Co., 13 Can. Ry. Cas., 1*, what was before the Board was the conversion of a farm crossing into a highway crossing. This was allowed. At the same time, on account of the features of danger existing, the burden of protection by gates and watchmen was imposed upon the municipality.

The order in the present case goes, subject to the municipality bearing the full burden of cost of such protection as may from time to time be found necessary. The limitations in regard to contribution from the Grade Crossing Fund are such that no contribution can be made in the present instance. For the present, protection by a watchman, between the hours of 7.30 a.m. and 5 p.m., is to be provided for, at the expense of the municipality.

The matter will be kept checked up so that the question of additional protection may be dealt with from time to time as the need arises. The cost of construction and maintenance of the crossing, under the Board's practice, will be upon the municipality, as it is junior at this point.

The order will also provide for the rearrangement, at the expense of the foundry company, of the switch and tracks as above referred to, and as set out in the plan, copy of which will accompany the order.

February 13, 1920.

The Chief Commissioner and Commissioner Rutherford concurred.

Application of the Saskatchewan Supply and Fuel Company, Ltd., Saskatoon, Sask., that the Board take up the question of free time allowed for ordering and paying freight charges.

File 29789.

JUDGMENT.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Applicant has a private siding on the Canadian National Railway track on which its sheds are located, these sheds being divided into some sixteen different bins. It has also the use of trackage on the John Deere Company's spur—a Canadian Pacific spur. This spur, while built under agreement for the John Deere Company, has had another spur built off it, and there is another application pending for a further extension. While the applicant does not own this spur or any portion of it thereof, or contribute to its upkeep, it has in this facility in practice the advantage of a private spur.

In a communication received since the hearing from the solicitor of the Canadian Pacific, the following statement occurs concerning the position taken by Mr. Strickland, a member of the applicant company:—

“Mr. Strickland authorized our superintendent, Mr. McKay, to say that his company did not desire to attach any significance to the fact that they are not in one sense served by an exclusive private spur. They admitted that they are treated identically as if they had an exclusive private spur, and desire that it be so considered.”

The applicant has adjacent to the Canadian Pacific spur in question fourteen different coal bunkers or open bins. The following submission is made:—

“Our cars may either be required at one of our bins on the Canadian National track or one of our open bins on the Canadian Pacific track, or it may be required to be spotted on either track to be unloaded by teams, and the disposition of the car depends, first, upon the kind of coal contained in the car, and, secondly, upon whether the railroad has one car for us on that particular day or a number of cars, in which latter case some are required at the bins and the balance spotted for unloading by teams. Under these circumstances, our position is entirely different from the position of the owner of a private siding who has a warehouse or building of some kind at which all his cars are to be spotted, and it is next to impossible for us to give placing instructions immediately we are notified as to the arrival of the car.”

Complaint is made that the secretary of the Canadian Freight Association, western lines, has given a ruling that since the applicant's cars are spotted on a private siding no time allowance for either ordering the car or paying freight charges is allowed.

Dealing first with the question of time allowance for the payment of freight charges, it may be pointed out that in the rules formerly effective rule 2 provided *inter alia* that twenty-four hours should be allowed the consignee to pay the tolls or charges, if any. This was, however, subject to rule 11, which provided that this extra time allowance was not to be made where the railway company held previous or standing orders from the consignee for placing on designated tracks or private sidings. Under the rules now operative, which have been in effect since August 20, 1917, it is to be noted that while rule 3 (a), and clause 2 thereof, provides for twenty-four hours' free time for giving orders for special placement, it makes no mention, as did rule 2 of the former rules, of this period covering an allowance “in which to pay the tolls or charges (if any).” And, further, the provisions of the present rules, as above referred to, in respect of orders for special placement are not applicable to “consignees served by private sidings or industrial interchange tracks.”

While under rule 2 (b) delivery of cars upon private sidings or industrial interchange tracks constitutes notification thereof to the consignee, it appears that in practice some arrangement has for some time existed whereby the applicant gives a special placing order. There is some difference of opinion as to the extent to which this has been lived up to. The following discussion is in point (evid., vol. 319, p. 12453):—

“The ASSISTANT CHIEF COMMISSIONER: So long as the railways live up to your instructions as to special notification for placing, that not being the strict letter of the rule, things worked all right?”

“Mr. STRICKLAND: Yes.

“The ASSISTANT CHIEF COMMISSIONER: But as soon as the strict letter of the rules apply, you have trouble about demurrage?”

“Mr. CAMPBELL: No, he still wants another day. The practice to-day is this: A car comes in and instead of being immediately placed on Mr. Strickland's siding he is sent a regular No. 3 advice note; if he gives the disposition the same day, up to 5.30 in the evening, on that car, we consider that it will be placed and his free time commence provided it is placed the following morning at 7 a.m., but there is an isolated case possibly where Mr. Strickland does not get his notification early enough to enable him to decide what he is going to do with it, although I am told, subject to correction, that 4 o'clock is about the latest hour that the advices are delivered. Then Mr. Strickland has to decide whether he wants the car on one siding or another or he turns cars over to other consignees, he sells coal by the carload to other people, or he will have it placed somewhere, but he figures that the free time will not expire before he will have

time to team it and save him the expense of unloading the coal into the bins, but in all those cases where he gives his notification the same day as he is advised, the rule does not come into operation, but Mr. Strickland's point is that he should have the following day as well for giving his order."

In effect, the applicant contends that because of special conditions affecting his business he should have a modification of rule 2 (*b*) whereby he will obtain extra time not allowed under that rule.

As to the Canadian Pacific track concerned, it appears, as has been pointed out, that the applicant has the advantages attaching to the position of a private siding owner, without being subjected to the disabilities of paying for the same.

In a hearing which the Board held on October 21, 1919, the Board was asked by the Canadian Car Demurrage Bureau for a ruling. What was involved was:—

"The question submitted to the Board was as follows:—

"A consignee who has two or more private tracks connecting with tracks of the railway at same point, and upon which the railway company performs necessary switching to place and remove cars, advances the opinion that he should be allowed twenty-four hours' free time after notice of arrival of a car to designate the particular track upon which he requires a car placed. Should the twenty-four hours' free time be granted, or should he (consignee) not be advised that he should be in a position to designate the track immediately car is offered to him for unloading?"

RULING.

"On the hearing of the matter at the sittings of the Board at Ottawa, on Tuesday, October 21, 1919, the Board decided that the rule (No. 2), as it stands, does not cover the situation raised, that is, by way of entitling a private owner to any extra time."

In the application of F. R. Stewart & Company, Limited, Vancouver, which was heard at Ottawa on October 21, 1919, what was involved was that the applicant who was limited to 33 feet of an industrial siding contended that he should be given the advantage of the twenty-four hours' provision of rule 3 for giving placement directions; and it was held that under the rules the user of the private siding was not entitled to the extra free time asked for.

The Board has had before it from time to time various applications from individuals contending that because of the special disabilities of their businesses special allowance of free time over and above what is contained in the rules should be made; and the Board has uniformly held that as the rules provide for average maximum reasonable time, departure therefrom is not justifiable.

In the present instance, a case for the extension asked for has not been made out.

A complaint was made as to the effect on applicant's free time of a demand by the railway, or railways, for a marked cheque to cover freight charges. The applicant sets out:—

"In the matter of freight charges we have no credit account with the railways nor will they give us one, and while we usually get along without a marked cheque they have a habit of occasionally demanding marked cheques, in which case it is absolutely impossible for us to pay the freight charges until the bank opens at 10 o'clock the following morning."

What is complained of is not a present difficulty, for Mr. Strickland said at the hearing "at the present time the practice is to place cars without the cheque, but

I want to point out we are subject to that difficulty any time." Mr. Campbell, secretary of the Canadian Freight Association, western lines, stated in evidence (vol. 319, p. 12450):—

"For example, Mr. Strickland referred to rule 2-b. He is not suffering any hardship under that rule because it is not the practice of the railways to place the cars upon his private siding before he gives them the placing order . . . We do not deliver any car to him until he orders it placed."

So long as the practice so accepted by the railways is continued, there appears to be no difficulty in the situation. If it should be departed from, then, on a written submission from the applicant setting out in a specific case, or cases, the encroachment upon the free time allowed under the rules, resulting from the demand for a marked cheque, the Board will consider whether or not there has been delivery, thus enabling the free time to run, when at the same time the applicant is unable to unload his cars until the marked cheque is given, and will take such action as seems proper.

February 16, 1920.

The Chief Commissioner concurred.

ORDER No. 29389.

In the matter of the application of the Saskatchewan Supply and Fuel Company, Limited, hereinafter called the "applicant company," for the consideration by the Board of the question of free time allowed for ordering and paying freight charges.

File No. 29789.

SATURDAY, the 21st day of February, A.D. 1920.

HON. F. B. CARVEL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon hearing the application at the sittings of the Board held in Saskatoon, November 29, 1919, the applicant company, the Canadian Freight Association, and the Canadian Pacific Railway Company being represented at the hearing, and what was alleged,—

It is ordered: That the application for a modification of rule 2 (b) of the Canadian Car Demurrage Rules to afford free time for alternative placement orders for unloading cars, also for an allowance of free time for paying freight charges, be, and it is hereby, refused.

S. J. McLEAN,
Assistant Chief Commissioner.

Application of the Toronto, Hamilton and Buffalo Railway Company for an order authorizing the company to reconstruct overhead bridge at Main street, Hamilton, Ont.

File No. 29688.

JUDGMENT.

The CHIEF COMMISSIONER:

This application was heard by the Board at Hamilton on the 29th day of October last, and, in substance, amounts to an application on behalf of the Toronto, Hamilton and Buffalo Railway Company for an order authorizing the company to reconstruct the bridge across Main street in the city of Hamilton. The only question at issue seems to be whether the bridge shall be covered with a wooden block pavement, as contended by the city, or whether it should be reconstructed with the same character of roadway surfacing as was in existence when the bridge was originally built.

In my judgment, the company should be bound to replace the bridge with surfacing of the same character as was upon the roadway when it was severed by the construction of the railway in the first instance. The municipality had, at that time, a highway road located upon a solid foundation sufficient to carry the traffic at that time and for all time to come. The railway company legally obtained the right to make a cutting through this roadway, and should be compelled to replace the roadway by a substructure equal to all the possibilities of the original road foundation, upon which can be placed the same kind of surfacing as existed at that time or any better or more modern kind, and, if they wish a block pavement, the burden should be upon the municipality of providing the same over and above what would be the cost of replacing the roadway as it existed at the time of the construction of the original bridge, and an order approving the plan should go accordingly.

February 17, 1920.

The Assistant Chief Commissioner and Commissioner Boyce concurred.

ORDER No. 29378.

In the matter of the application of the Toronto, Hamilton and Buffalo Railway Company, hereinafter called the "applicant company," under sections 251 and 256 of the Railway Act, 1919, for authority to reconstruct bridge over Main street, in the city of Hamilton, Ont., as shown on the plan dated Hamilton, May 10, 1919, on file with the Board under file No. 29688.

FRIDAY, the 20th day of February, A.D. 1920.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Hamilton, October 29, 1919, in the presence of counsel for the applicant company and the city of Hamilton, and what was alleged,—

It is ordered: That the applicant company be, and it is hereby, authorized to reconstruct the bridge over Main street, in the city of Hamilton, province of Ontario, as shown on the said plan on file with the Board under file No. 29688; the roadway on the said bridge to be replaced by a substructure equal to the original road foundation

upon which can be placed the same kind of surfacing as existed at that time, or any better or more modern kind; and if a block pavement is desired, the cost of the same, over and above the cost of replacing such roadway as it existed at the time of the construction of the original bridge, shall be borne and paid by the city of Hamilton, the remainder of the cost of reconstruction to be paid by the applicant company.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 29263.

In the matter of the application of the Fredericton and Grand Lake Coal and Railway Company, under section 330 of the Railway Act, 1919, for approval of its Standard Mileage Freight Tariff, C.R.C. No. 84, on file with the Board under file No. 29866.1.

SATURDAY, the 10th day of January, 1920.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the standard tariff of maximum mileage freight rates, C.R.C. No. 84, to apply between stations on the railway of the Fredericton and Grand Lake Coal and Railway Company, be, and it is hereby, approved; the said tariff, with a reference to this Order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 29264.

In the matter of the application of the New Brunswick Coal and Railway, under section 330 of the Railway Act, 1919, for approval of its Standard Mileage Freight Tariff, C.R.C. No. 51, on file with the Board under file No. 29867.1.

SATURDAY, the 10th day of January, A.D. 1920.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the standard tariff of maximum mileage freight rates, C.R.C. No. 51, to apply between stations on the New Brunswick Coal and Railway, be, and it is hereby, approved; and that the said tariff, with a reference to this Order, be, published in at least two consecutive weekly issues of the *Canada Gazette*.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 29323.

In the matter of the application of the New Brunswick Coal and Railway, under section 334 of the Railway Act, 1919, for approval of its Standard Passenger Tariff, C.R.C. No. 4.

File No. 29867.1.

FRIDAY, the 30th day of January, A.D. 1920.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the Standard Passenger Tariff, C.R.C. No. 4, to apply between stations on the New Brunswick Coal and Railway, be and it is hereby, approved; and that the said tariff, with a reference to this Order, be published in at least two consecutive weekly issues of the *Canada Gazette*.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 29370.

In the matter of the application of the Fredericton and Grand Lake Coal and Railway Company, under section 334 of the Railway Act, 1919, for approval of its Standard Passenger Tariff, C.R.C. No. 4.

File No. 29866.1.

FRIDAY, the 30th day of January, A.D. 1920.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the said Standard Passenger Tariff, C.R.C. No. 4, to apply between stations on the railway of the Fredericton and Grand Lake Coal and Railway Company, be, and it is hereby, approved; the said tariff, with reference to this Order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 29365.

In the matter of the application of the British Columbia Telephone Company, under section 323 of the Railway Act, 1919, for approval of by-law, passed December 23, 1919, authorizing the president, William Farrell, and the secretary, Gordon Farrell, or either of them, from time to time to prepare and issue tariffs of tolls and other charges to be made, both local and long distance, and to specify the persons to whom the place where, and the manner in which such tolls shall be paid.

File No. 29885.

WEDNESDAY, the 4th day of February, A.D. 1920.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

It is ordered: That the said by-law be, and it is hereby approved.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 29350.

In the matter of the application of the Canadian National Railways, hereinafter called the "applicants," under the provisions of the General Order of the Board No. 119, dated January 31, 1914, for authority to remove the station agent at Cap Santé, mileage 33.7 of the St. Lawrence sub-division, in the province of Quebec.

File No. 17989.

FRIDAY, THE 6TH DAY OF FEBRUARY, A.D. 1920.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*Hon. W. B. NANTEL, K.C., *Deputy Chief Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the municipal council of the county of Portneuf; and upon the report and recommendation of an Inspector of the Board, concurred in by its Chief Operating Officer.—

It is Ordered: That the applicants be, and they are hereby, granted leave, pending further Order, to remove the station agent at Cap Santé, in the county of Portneuf, province of Quebec, subject to and upon the condition that a caretaker be appointed to see that the station is kept clean, and heated and lighted when necessary for the accommodation of passengers on the arrival and departure of trains, and to care for L.C.L. freight and express shipments.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 29343.

In the matter of the application of the Toronto, Hamilton & Buffalo Railway Company, hereinafter called the "applicant company," under the provisions of the General Order of the Board No. 119, dated January 31, 1914, for authority to remove its station agent at Vanessa, in the township of Townsend, the county of Norfolk, and province of Ontario.

File No. 4205.246.

SATURDAY, THE 7TH DAY OF FEBRUARY, A.D. 1920.

HON. F. B. CARVELL, K.C., Chief Commissioner.

S. J. McLEAN, Asst. Chief Commissioner.

A. S. GOODEVE, Commissioner.

Upon reading what is filed in support of the application, the township of Townsend offering no objection; and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is Ordered: That the applicant company be, and it is hereby, relieved, pending further Order, from maintaining a station agent at Vanessa, in the township of Townsend, in the county of Norfolk and province of Ontario, subject to and upon the conditions that the applicant company arrange: (a) to keep the station clean, heated and lighted when necessary; (b) to take care of express shipments to and from the said station; and (c) to take care of less than carload freight to and from the said station, in accordance with the requirements of the General Order of the Board No. 235, dated May 22, 1918.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 29368.

In the matter of the consideration of the question of the protection to be provided at the crossings of Metcalfe, Caradoc, Oxford, Victoria, and Richmond streets, on the Grand Trunk Railway, in the town of Strathroy, province of Ontario.

Case No. 4795 and Files Nos. 13157, 26765.145, 26765.147, and 20127.

TUESDAY, the 10th day of February, A.D. 1920.

HON. F. B. CARVELL, K.C., Chief Commissioner.

S. J. McLEAN, Assistant Chief Commissioner.

HON. W. B. NANTSEL, K.C., Deputy Chief Commissioner.

A. S. GOODEVE, Commissioner.

A. C. BOYCE, K.C., Commissioner.

J. G. RUTHERFORD, C.M.G., Commissioner.

The evidence in this application having been heard at Strathroy, November 1, 1919, by the Assistant Chief Commissioner of the Board, appointed under section 12 of the Railway Act, 1919, the railway company and the town of Strathroy being represented at the hearing, and what was alleged, the said Assistant Chief Commissioner having reported to the Board, and the said report having been adopted.

It is ordered as follows:—

1. That the Grand Trunk Railway Company be, and it is hereby, required to maintain watchmen at the crossings of Metcalfe and Caradoc streets, in the town of Strathroy, province of Ontario, between the hours of 6 a.m. and 10 p.m., daily

(two watchmen in each case working for an eight-hour day); the wages of such watchmen to be borne and paid sixty per cent by the railway company and forty per cent by the town of Strathroy.

2. That the Order of the Board No. 10769, dated June 1, 1910, made herein, be continued in effect; the said order to be amended to provide that the Grand Trunk Railway Company shall be liable to a penalty of \$25 for each and every failure to comply with the requirements of the said order.

F. B. CARVELL,
Chief Commissioner.

ORDER No. 29377.

In the matter of cars to be supplied at elevators at Fort William and Port Arthur, in the province of Ontario, for the carriage of grain to Eastern Canada for domestic consumption; and the Order of the Board No. 29312, dated January 30, 1920, as amended by Order No. 29336, dated February 5, 1920, made therein.

File No. 18705.435.

THURSDAY, the 19th day of February, A.D. 1920.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.O., *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

It is ordered: That the said Orders Nos. 29312 and 29336, dated respectively January 30, 1920, and February 5, 1920, be, and they are hereby, suspended pending further Order of the Board.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 29386.

In the Matter of the application of the Kettle Valley Railway Company, hereinafter called the "applicant company," under section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its line of railway extending from mileage 13.6 (Princeton) to mileage 8, south of Princeton, a distance of 5.6 miles.

File No. 28618.3.

FRIDAY, the 20th day of February, A.D. 1920.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of the Chief Engineer of the Board,—

It is Ordered: That the applicant company be, and it is hereby, authorized to open for the carriage of freight traffic that portion of its line of railway extending from mileage 13.6 (Princeton) to mileage 8, south of Princeton, a distance of 5.6 miles; the speed of trains operated over the said line not to exceed a rate of ten miles an hour; and the authority granted under this Order to cease and determine on the 1st day of July, 1920.

S. J. McLEAN,
Assistant Chief Commissioner.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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No. 25

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Application for the suspension of proposed tariff C.R.C. No. 25, effective June 1, 1919, which increases the rates for transportation of milk in passenger or mixed passenger and freight train service (baggage cars).

File 16939.13.

Heard at Ottawa, June 10, 1919.

JUDGMENT.

COMMISSIONER BOYCE:

Application is made by the National Dairy Council, for suspension of the following tariffs, for shipment of milk in passenger, or mixed passenger and freight train service (baggage cars), viz:—

1. Canadian Pacific Railway Company's Tariff, C.R.C. No. E. 25.
2. Grand Trunk Railway Company's Tariff, C.R.C. No. 1. 2756.
3. Canadian National Railway Company's Tariff, C.R.C. No. E. 29.
4. New York Central Railroad Company's Tariff, C.R.C. No. 249.
5. Quebec, Montreal and Southern Railway Company's Tariff, C.R.C. No. 271.
6. Napierville Junction Railway Company's Tariff, C.R.C. No. 113.
7. Montreal and Southern Counties Railway Company's Tariff, Supplement No. 2 to C.R.C. No. 22.

The first four tariffs were proposed to be made effective June 1, 1919, the 5th and 6th on June 15, and the 7th on the 25th of June, 1919.

The complainant points out that the present rates for the milk service for which the proposed tariffs provide substantial increase in charges, are found in C.P.R. Tariff C.R.C. No. E. 2847, at page 20.

The substance of the objection to the proposed rates is that they are excessive; that the present rates afford adequate remuneration to the railways for the services performed in and about the carriage of this universal food commodity; that the present rates are all the traffic will, or should, bear; and that any increase is without justification, and would have the effect of increasing the cost to the consumer, of an essential food commodity. The Board of Trade of the city of Toronto joined in the objection, and, at the hearing, the Farmers Dairy Company, Toronto, the Ottawa Dairy Company, the Montreal Dairy Company, and the Border Chamber of Commerce, Windsor, were also represented.

Upon the representations of the applicant, and after interim submissions by the railways, and, pending a hearing and disposition thereupon, the Board, by order, suspended the operation of the tariffs, and, since the hearing, the railway companies concerned were required by the Board to submit statements of the traffic showing:—

1. The nature and extent of the milk movement to representative points—Montreal, Quebec, Ottawa, Toronto, Hamilton, London, Windsor, and any other representative points, upon the railway concerned in maintaining proposed tariff, to which the traffic moves.

2. The earnings on these movements at the proposed new rates, and the earnings on the old rates.

3. The extent, nature, and particulars of any factors, alleged to have contributed to the increased cost of the traffic, and necessitating, and alleged to justify the increase in rates,

the delivery of which has occasioned some delay in getting the case ready for disposition.

The baggage car service for carriage of milk was inaugurated in 1886. The basis of these rates then, were as follows:—

For 40 miles, or less.	15	cents	per	8-gallon	can.
Over 40 miles and up to 80 miles.	20		"	"	"
Over 80 miles and up to 120 miles.	25		"	"	"

A revision of those rates went into effect May 1, 1891, as follows (Tariff 165):—

For distances 40 miles and under.	15	cents	per	8-gallon	can.
" 41 miles to 150 miles.	20		"	"	"

The effect of the revision being to effect a reduction of rates of carriage over 80 miles by 5 cents per 8-gallon can, with an extension of the maximum distance from 120 to 150 miles at 5 cents less per can than the rates of 1886 provided for.

In 1893 these rates were again varied in connection with a proposed change in the rates as to 4-gallon cans, as follows:—

For 40 miles, or less.	8	cents	per	4-gallon	can.
For 41 miles to 150 miles.	11		"	"	"

In June, 1911, the Board heard an application, made by the Montreal Milk Shippers Association, asking (a) that the railway companies give a rate of 8 cents for a 4-gallon can and 15 cents for an 8-gallon can, respectively, up to 75 miles, and 11 cents for a 4-gallon can and 20 cents per 8-gallon can for all distances over 75 miles, that is, increasing the distances over which the rates prescribed in the tariff of 1893 on 4-gallon cans were effective, and, consequently, effecting a reduction in rate on the 4-gallon can; and, (b) that certain conditions of carriage of the milk traffic be prescribed. By its Order No. 15413, dated 26th September, 1911, disposing of this application, the Board directed, *inter alia*, that on and after the first day of September, 1912, the railway companies should not be required to accept for transportation any cans of milk of less capacity than 8 gallons, whether containing milk or empty. This order effected a cancellation of the rates filed in 1893 on 4-gallon cans, by abolishing the traffic in that quantity, leaving the rates on 8-gallon cans as prescribed by tariff 165, May 1, 1891, cited above. The order further prescribed conditions of carriage of the traffic, which had not theretofore been settled, and which had been the subject of frequent complaint and disputes between the shippers and carriers. As related to the history and growth of the traffic, the evidence at the hearing has some bearing on the present application and will be referred to hereafter. The conditions of carriage are substantially those prescribed by the tariff now attacked. By reference to these conditions, it will be seen, *inter alia*, that the shipper must properly mark and secure his can, and attach to it a milk ticket and shipping tag, and shall load the cans at the shipping point, and the shipper is required to have his milk at point of shipment, properly way-billed, at least fifteen minutes before the arrival of the train on which it is to be shipped, and consignees are required to take delivery from the door of the baggage car. At flag stations billing is to be done by shippers; empty cans are to be

returned by the railway company, to shipping point, free of charge—but, if such number more than 20, shippers must provide one man at shipping point to assist in their unloading. If over 40 cans the shipper is to provide two men; the railway company is to continue the issuance of milk tickets, and shall not be liable for loss of, or damage to, or delay in, any shipment of milk, or can, unless resulting from negligence of the company, its servants or agents.

It will be observed that the conditions of carriage reduce the service to be performed by the railway company to practically that of mere carriage of the commodity. The railway is relieved of the expense incident to loading and unloading, and, to a large extent, that of billing. Its liability as a common carrier is also minimized and restricted. It is, as regards this traffic, no insurer, and the implied undertaking to carry the commodity safely is restricted to acts resulting from negligence of itself, its servants, or agents. The burden, service and responsibility of the carrier are in this special arrangement shared between shipper and carrier, and it is urged, not without some considerable force, that the shipper's contribution to the service of carriage, beyond those duties resting upon a shipper in an ordinary contract of carriage, is very little less than, if not equal to, that of the carrier. In an ordinary transaction of carriage the shipper's duty is performed when he has delivered his package to the carrier at the latter's receiving station and has obtained a shipping receipt for it. Under the special conditions governing the contract for carriage of milk in baggage cars, the shipper, instead of the carrier, must attend to the ticketing or billing (in some instances) of the consignment, and load it himself, or employ others to load it, into the baggage car. On reaching its destination the consignee must be on hand on the arrival of the train to take delivery at the door of the baggage car. If he does not perform this work himself he must employ others to do it, and, both by shipper and consignee, there is a service of value, and involving expense, which expense increases proportionally with the expense of any handling or expense of carriage by the railway company. The railway performs no service to the commodity during transit. If the weather be hot there is no icing; if extremely cold, no heat is included in the service. If damage results from the absence of icing, or of heat, the carrier is not responsible. In short, the carrier has practically performed his duty when it has given space in the baggage car of its passenger trains to a milk shipment, ticketed and loaded by the shipper, and to be unloaded by the consignee at destination.

With no modification of these conditions of carriage, and with none in contemplation (as counsel for the C.P.R. states to the Board) the tariffs now attacked are submitted, and which propose to substitute the following rates for those now in force under the old tariffs just referred to, viz:—

EIGHT-GALLON CANS—IMPERIAL MEASURE.

(C.P.R. Proposed Tariff.)

Miles.				Rates, Cents.
Over	Not over 10 miles..	20 miles..	..	17
"	10, but not over	30 "	..	18
"	20 "	40 "	..	19
"	30 "	50 "	..	20
"	40 "	60 "	..	21
"	50 "	70 "	..	22
"	60 "	80 "	..	23
"	70 "	90 "	..	24
"	80 "	100 "	..	25
"	90 "	110 "	..	26
"	100 "	120 "	..	27
"	110 "	130 "	..	28
"	120 "	140 "	..	29
"	130 "	150 "	..	30
"	140 "	150 "	..	31

The Grand Trunk Railway Company and the Canadian National Railway Company carry the tariff up to 350 miles on the same scale; the Montreal and Southern Counties Railway Company carry the tariff up to 50 miles on the same scale; the Quebec, Montreal and Southern Railway Company and the Napierville Junction Railway Company carry the tariff up to 250 miles on the same scale; and, the New York Central Railroad Company carry the tariff up to 60 miles on the same scale.

There is some evidence as to the average distance of haul to different milk centres—e.g., Mr. R. D. Hughes, General Manager of the Farmers Dairy Company, says (p. 8116), that the longest haul to Toronto, in summer, would be 60 miles, in winter about 140 miles. The average in summer would be 35 miles; in winter 100 miles.

The representative of the Montreal Dairy Company says (p. 8116), that the average haul is about one-half up to 40 miles and the other half between 85 and 101 miles.

Mr. Nancekivell, of the Chamber of Commerce, Windsor, says (p. 8119) that 80 per cent of the milk supply of Windsor comes from Oxford county, Ingersoll, and Woodstock, which means a haulage of from 130 to 140 miles.

These haulage figures, furnished in a general way, when applied to the centres affected, would mean the increases in tariff as follows, viz.:—

	Per Cent.
Toronto, summer, 35 miles, average increase..	33.3
" winter, 100 "	30
Montreal, summer, 40 "	33.3
" winter, 85 to 101 miles average increase..	30
Windsor, winter and summer (80 per cent) 130 to 140 miles increase..	50

These are very general estimates appearing in the evidence, of mileage, given at the hearing. With a view to greater accuracy, as to mileage movements, take the average mileage of each railway to the centres to which the traffic moves—taken from statements filed by the railways since the hearing. The figures given are not indicative of the volume of traffic moving within the mileages given. That analysis will be dealt with further on.

1. *Canadian Pacific Railway Company—*

	Average Mile.
(a) Montreal..	57.2
(b) Ottawa..	40.34
(c) Windsor..	62.36
(d) Quebec..	32.03
(e) Toronto..	72.04
All centres..	60.25

2. *Grand Trunk Railway Company—*

	Average Mile.
(a) Montreal..	51.69
(b) Ottawa..	32.56
(c) Windsor..	91.77
(d) Quebec..	97.38
(e) Sherbrooke..	23.98
(f) Brockville..	41.26
(g) Hamilton..	20.90
(h) London..	26.28
(i) Toronto..	60.41
All centres..	54.53

3. *Canadian National Railways—*

	Average Mile.
(a) Montreal..	39.05
(b) Quebec..	35.80
(c) Garneau..	21.80
(d) Brockville..	16.80
(e) Trenton..	36.50
(f) Toronto..	56.46
All centres..	45.20

4. *New York Central Railway Company—*

	Average Mile.
(a) Montreal.. . . .	34·86
(b) Ottawa.. . . .	30·83
All centres.. . . .	40·69

The other railways concerned, viz., the Quebec, Montreal and Southern, the Napierville Junction Railway, and the Montreal and Southern Counties Railway did not furnish the information upon which a similar analysis could be made.

From the figures given above, as to the mileage movements, to different Eastern centres, indicated by the railways statements, the following appears to show the general averages of distances of haul to those centres of all railways concerned, and furnishing information.

Centre.	General Average Distance of Movements.
1. Montreal.. . . .	45·70
2. Ottawa.. . . .	34·44
3. Windsor.. . . .	77·06
4. Quebec.. . . .	53·07
5. Sherbrooke.. . . .	23·98
6. Brockville.. . . .	29·03
7. Hamilton.. . . .	20·90
8. London.. . . .	26·28
9. Toronto.. . . .	58·53

In further analysis of the statements furnished by the railways as to the mileage of the traffic to the six principal and representative centres, the following table will indicate the number of shipping points on each railway making return, located within the 10-mile zones proposed by the schedule:—

STATEMENT OF TRAFFIC MOVEMENTS BETWEEN ZONES, 10 TO 150 MILES, TO PRINCIPAL CENTRES OF TRAFFIC.

Miles.	Montreal.			Toronto			Ottawa			Quebec			Windsor.			Brockville			Totals.
	C.P.R.	G.T.R.	C.N.R.	N.Y.C.	C.P.R.	G.T.R.	C.N.R.	C.P.R.	G.T.R.	C.N.R.	C.P.R.	G.T.R.	C.P.R.	G.T.R.	C.N.R.	C.P.R.	G.T.R.	C.N.R.	
a 10 to 20.....	4	9	2	1	2	7	1	3	2	-	1	0	1	0	0	0	1	2	38
b 20 " 30.....	9	13	4	1	7	14	3	1	2	-	1	0	0	0	0	0	4	1	63
c 30 " 40.....	4	19	2	2	5	13	4	3	2	-	3	0	1	0	0	0	0	0	59
d 40 " 50.....	7	19	2	2	5	8	3	1	0	-	1	0	0	0	0	0	0	0	50
e 50 " 60.....	10	9	2	1	2	4	2	0	0	-	0	1	0	0	0	0	0	0	32
f 60 " 70.....	10	15	1	0	1	5	2	1	0	-	0	0	0	0	0	0	0	0	36
g 70 " 80.....	6	9	0	0	2	8	2	1	1	-	0	0	0	0	0	0	0	0	29
h 80 " 90.....	5	10	0	0	6	6	2	0	0	-	0	0	0	1	0	0	0	0	30
i 90 " 100.....	2	2	1	0	6	9	1	0	0	-	0	0	0	0	0	0	0	0	23
j 100 " 110.....	3	2	0	0	4	8	1	1	0	-	0	0	0	0	0	0	0	0	19
k 110 " 120.....	2	0	0	0	2	1	0	0	0	-	0	0	0	0	0	0	0	1	8
l 120 " 130.....	0	2	0	0	3	1	1	0	0	-	0	0	0	0	0	0	0	0	7
m 130 " 140.....	0	0	0	0	2	1	0	0	0	-	0	0	0	0	0	0	1	0	4
n 140 " 150.....	0	0	0	0	1	2	0	0	0	-	0	0	0	0	0	0	0	1	4
	62	109	14	7	48	87	22	11	7	-	6	6	1	4	4	3	0	6	402
	192			157			24			11			7			11			
Percentage of whole.....	47.76%			39.05%			5.97%			2.74%			1.74%			2.74%			

The above analysis shows that the movements from the various tariff zones to all the centres named took place in the ratio and percentage following, viz.:—

			Percentage.	Percentage.	Percentage.
From	10 to	20 miles..	9.45		
"	20 "	30 "	15.67		
"	30 "	40 "	14.68		
"	10 "	40 "	.....	39.80	
"	40 "	50 "	12.44		
"	50 "	60 "	7.96		
"	40 "	60 "	.....	20.40	60.20
"	60 "	70 "	8.96		
"	70 "	80 "	7.21		
"	60 "	80 "	.....	16.17	76.37
"	80 "	90 "	7.46		
"	90 "	100 "	5.72		
"	80 "	100 "	.....	13.18	89.55
"	100 "	150 "	.....	10.45	100.00

Applying the mileage percentages above mentioned to the scale of mileage zones of the tariff now in force, the percentage of the mileage movements from those zones, according to the statements furnished by the railways, would be:—

	Per Cent.
For 40 miles and under..	39.80
" 41 " to 150 miles..	60.20

and applying the percentages to the mileage zones, proposed in the new tariffs, now under consideration, the following would result as to percentage of the mileage movements from those zones, respectively, to the centres—

	Per Cent.
From 0 to 40 miles..	39.80
" 0 " 50 "	52.24
" 0 " 60 "	60.20
" 0 " 70 "	69.16
" 0 " 80 "	76.37
" 0 " 90 "	83.83
" 0 " 100 "	89.55
" 0 " 150 "	10.45

and the average of the zone haul to each of the centres respectively, would work out upon the same table, as follows:—

AVERAGE OF ZONE HAUL TO EACH OF THE CENTRES.

Center.	0 to 40 M.	40 to 50 M.	50 to 60 M.	60 to 70 M.	70 to 80 M.	80 to 90 M.	90 to 100 M.	100 to 150 M.
	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.
Montreal.....(a)	36.46	15.62	11.46	13.46	7.90	7.81	2.60	4.69
.....(b)		52.08	63.54	77.00	84.90	92.71	95.31	
Toronto..(a)	35.67	10.19	5.14	5.05	7.64	8.92	9.56	7.83
.....(b)		45.86	51.00	56.05	63.69	72.61	82.17	
Ottawa.....(a)	75.00	8.33	.....	4.17	8.33	.....	.....	4.17
.....(b)		83.33	.....	87.50	95.83	.....	.....
Quebec.....(a)	63.63	9.10	9.09	9.08	.....	.....	9.10	.....
.....(b)		72.73	81.82	90.90	.....	.....	100.00	
Windsor.....(a)	14.30	14.27	14.29	.....	.....	14.28	14.29	23.57
.....(b)		28.57	42.86	.....	.....	57.14	71.43	
Brockville.....(a)	72.73	.....	.....	.....	.....	.....	.....	27.27

NOTE.—The figures in columns—on line marked (a) indicate percentage of traffic to and within the zone area given.
 " " " (b) " addition to zone traffic to percentage of traffic to zones preceding.

The above results are not intended to be an analysis of the volume of traffic moving between the mileage zones mentioned, but to indicate, apart from the volume of traffic carried between and attributable to certain zones, the average zone movement of the traffic.

I will now consider, in the light of what information is furnished by the railways, the volume of traffic moving between the respective zones, with a view to ascertaining, with as much accuracy as figures furnished will allow, between what zone areas the burden of increase proposed will be carried.

The shipments in cans to the larger centres shown in the railways statements, viz.: Montreal, Toronto, Ottawa, Quebec, Windsor, and Brockville, would, (when extended upon an equal annual basis) show a total, on an annual basis (estimated) of 2,174,582, of 8-gallon cans moving to the centres mentioned. (No data under this head being furnished by any other railways than the C.P.R., G.T.R., and C.N.R.).

District.	C.P.R.	G.T.R.	C.N.R.	N.Y.C.R.	Total.
			No. of cars		
Montreal..	496,226	545,688	42,869	not given.	1,084,783
Toronto..	464,040	355,716	113,264	"	933,020
Ottawa..	18,720	36,780	None.	"	55,550
Quebec..	35,766	8,682	23,990	"	68,438
Windsor..	8,658	18,378	None.	"	17,036
Brockville.. . . . .	....	9,732	6,123	"	15,855
					2,174,582
Number of cans (on same estimated annual basis) shipped to other points..					25,326
Total annual number of cans carried (estimated)..					2,199,908

A glance at the above figures will show how largely Montreal and Toronto bulk as the centres of milk distribution. Together the shipments total 92.78 per cent of the total movements given by the railways, or 42.90 per cent to Toronto; 49.88 per cent to Montreal; and 7.22 per cent to other centres shown. These figures and percentages it is to be observed, are not in any sense an accurate statement of the whole traffic; but are based upon what data has been furnished by the various railways interested in supporting their proposed tariffs, and by extension of their figures upon an annual basis, when furnished only for two representative months. They are, however, close enough for analytical purposes.

According to a statement furnished by the Canadian Pacific Railway Company, the rates now proposed would effect increases upon the present schedule according to the percentages following, viz.:—

Mileage Proposed.	Present Rate. Cents.	Proposed Rate. Cents.	Increase Per Can. Cents.	Increase Percentage.
Not over 10 miles..	15	17	2	13.3
Over 10 not over 20..	15	18	3	20.0
" 20 " 30..	15	19	4	26.6
" 30 " 40..	15	20	5	33.3
" 40 " 50..	20	21	1	5.0
" 50 " 60..	20	22	2	10.0
" 60 " 70..	20	23	3	15.0
" 70 " 80..	20	24	4	20.0
" 80 " 90..	20	25	5	25.0
" 90 " 100..	20	26	6	30.0
" 100 " 110..	20	27	7	35.0
" 110 " 120..	20	28	8	40.0
" 120 " 130..	20	29	9	45.0
" 130 " 140..	20	30	10	50.0
" 140 " 150..	20	31	11	55.0

The percentage of increase shown by the above table present some striking features having regard to the percentages of zone haul of the traffic to the six centres shown in the statement of average zone haul. Applying the percentages of increase of proposed rates over existing rates in the latter to the average of zone haul, it is

manifest that the ordinary and well established principles of rate making, especially when applicable to zone hauls, are either departed from, or suffer some distortion. While long haul rates are, in proportion, cheaper than short haul rates, that element, at least, is wanting in the tariff now proposed to be based upon 10-mile haulage zones. One would expect that rates built upon that principle would increase with the number of zones covered by the total haul. The application of the tables drawn from the statements of traffic, etc., offered by the railways in support of the proposed tariff, show that, while this principle is adhered to in part, it is departed from, and in a way that largely discriminates against the volume of the traffic. In determining the fairness of the proposed increase of rates, for the carriage of so vital a food commodity, upon which a very large supply business has been built up, greater burdens rest upon the railways in their justification, and in their examination regard must be had, primarily, to the bearing, pro rata, the proposed new rates have upon the important traffic built upon the basis of the old rates. An analysis of the can mileage returns given show the following distribution of zone hauls to the large centres of Montreal and Toronto, which as I have shown bear so large a proportion of the whole traffic:—

CAN MILEAGE MOVEMENT TO MONTREAL.

Railway.	Mileage.											Totals.
	0 to 20.	0 to 30.	0 to 40.	0 to 50.	0 to 60.	0 to 70.	0 to 80.	0 to 90.	0 to 100.	0 to 110.	0 to 120.	
C.P.R.	38,268	71,664	124,038	27,828	44,214	32,346	12,474	16,104	93,390	33,000	2,910	496,236
G.T.R.	9,366	22,698	55,500	152,454	27,582	88,074	129,090	19,782	8,250	30,024		542,820
C.N.R.	19,138	14,113	2,409	6,546	141	361			511			43,219
Totals.	66,772	108,475	181,947	186,828	71,937	120,781	141,564	35,886	102,151	63,024	2,910	
	Mileage—all roads—120 to 150.											2,868
	Per cent Total.											1,085,143

CAN MILEAGE MOVEMENT TO TORONTO.

C.P.R.	6,036	56,532	45,186	15,168	8,280	2,352	2,418	133,908	132,810	25,134	570	428,394
G.T.R.	22,542	69,300	53,004	17,322	16,050	13,092	25,344	57,342	63,996	12,798	300	351,090
C.N.R.	1,915	31,117	18,618	14,491	4,604	4,061	11,247	16,350	8,509	2,243	1,109	114,264
Totals.	30,493	156,949	116,808	46,981	28,934	19,505	39,009	207,600	205,315	40,175	1,979	893,748
	Mileage—all roads—120 to 150 miles.											
	Per cent Total.											
												47,243
												940,991

It is to be noted that slight difference in totals above from those on preceding page is due to errors of addition in statements furnished by railways.

The application of the proposed rates to the new zone haulage of the traffic, shows the following results applicable to the centre of Montreal:—

						Increase. Per Cent.
In zone haul	0 to	40 miles	32.92 per cent of traffic would pay	33.3		
"	40 "	50 "	17.22	"	"	5.0
"	50 "	60 "	6.63	"	"	10.0
"	60 "	70 "	11.13	"	"	15.0
"	70 "	80 "	13.04	"	"	20.0
"	80 "	90 "	3.31	"	"	25.0
"	90 "	100 "	9.41	"	"	30.0
"	100 "	150 "	6.34	"	"	45.0

Substantially the same scale of increase is applicable to the Toronto traffic. A percentage (approximate) of 33½ per cent of the Montreal, and 33 per cent of Toronto traffic; fully 75 per cent of Ottawa; 95 per cent of Brockville; 75 per cent of Quebec; and about 6 per cent of the Windsor traffic representing 52.83 per cent (in round figures 53 per cent) of the total traffic moving to the six centres, in the traffic returns, moves in the zone 10 to 40 miles, and would, therefore, bear 33.3 per cent of the increased rates. Beyond that 10 to 40 mile zone, the movements become light and scattered as appears by the table showing average of zone haul, the additional 47 per cent of the traffic being distributed over zones from 50 to 150 miles. And yet, as the zone distances increase over 40 miles, and the traffic is divided into smaller portions between zones, and begins to dwindle as distances from centre increase, the burden of increase of rate that traffic bears sharply decreases, in the 40 to 50 mile zone carrying 17.22 per cent of the traffic) to 5 per cent; in the 50 to 60 mile zone (carrying 6.63 per cent of the traffic) to 10 per cent; in the 60 to 70 mile zone (carrying 11.13 per cent of the traffic) to 15 per cent; and in the 70 to 80 mile zone (carrying 13.04 per cent of the traffic) to 20 per cent; thus throwing the burden of increase of 33.3 per cent in rates upon the larger volume of traffic, moving within the shorter distances, and distributing the lighter increases (5 per cent to 20 per cent) amongst the lighter traffic moving between the zones having the longest haul.

Reference may be made here to the revenue derived from this traffic, i.e. to Montreal and Toronto, in relation to total revenue shown by the railways' filing tariffs. The statements of the C.P.R. and G.T.R. giving the figures, are for January and July, 1919, as representative months, so the figures are extended on an annual basis without specific regard to accuracy of calculation, but as giving a general indication as to the proportion these centres are contributing to the whole revenue shown:—

REVENUE.			
	Total.	Montreal.	Toronto.
C.P.R..	\$185,514 60	\$ 87,549 10	\$ 87,420 30
G.T.R..	180,754 50	104,759 40	62,967 60
C.N.R..	31,081 55	6,480 85	20,671 35
N.Y.C.R..	19,607 60	14,102 58	—
	<u>\$416,958 25</u>	<u>\$212,891 93</u>	<u>\$171,059 35</u>

\$383,951.28

Or 92.08 per cent of the total traffic.

The gross earnings from the milk traffic in Canada, as shown by railway statistics for 1918, appears to be—

For 1917.. . . .	\$538,486 82
" 1918.. . . .	550,416 08

by which it appears that about 69.76 per cent of the revenue from the milk traffic of Canada is derived from Montreal and Toronto traffic.

It is argued that the proposed schedule is with a view, first, of establishing the 10-mile zones of haul for this traffic as a more feasible and workable plan of handling the traffic, and secondly, of adjusting and equalizing the rates as between the zones, but the effect, as above indicated, of its application to a traffic which, inaugurated, under special conditions in 1886, has steadily grown to substantial proportions under the rates now in force, is not to be lost sight of in considering the general reasonableness of the proposed schedule as applied to the whole traffic. As I have before pointed out, the burden of establishing the reasonableness of the proposed change is clearly upon the railways proposing the change, and the condition of the traffic under consideration is such as to call for a strict application of the principles referred to in *Dominion Sugar v. Canadian Freight Association*, 14 C.R.C., p. 188, and emphasized in *Canadian Freight Association v. Caldwell*, 15 C.R.C. 156, in which latter case at p. 157, Mr. Commissioner McLean, in delivering the judgment of the Board, said at p. 157:—

The Board has laid down, in various decisions, that where a rate which has been for some time in force was increased, the burden of proving that such increase was reasonable was on the railway, it being held that a rate established in the first instance by a railway of its own volition was presumptively reasonable, and that it was incumbent upon the railway, if such initial rate was reasonable, to show with reasonable conclusiveness what changed conditions, or increase of operation justified the advance of the rate.

And, in the *Pender Case*, file 10720, where the rule was applied, it was required that the information as to changed conditions and cost should be as to the particular commodity on which the rate increase had been made.

While this principle was not followed in the Board's judgment in *International Paper Company v. G. T. R., C. P. R., and C. N. R. Companies*, 15 C.R.C. p. 111, the presumption was by the majority of the Board, held to be subject to the qualification that operating costs have not materially advanced. In the dissenting judgment of Mr. Commissioner McLean, he says:—

“The Board, however, has laid down the position that when a rate is increased the burden is upon the railway to justify this increase; and it has further held that general allegations as to increase of cost of service, etc., are not conclusive, as to the reasonableness of the rate. Personally, I am of the opinion that the railway should adduce particular information as to the increase of the particular costs affecting the traffic in question, if increase of cost is to have any adequate weight in justifying the reasonableness of the rate attacked. In a recent decision of the Interstate Commerce Commission, *Geo. A. Hormel & Co. v. Chicago, Milwaukee & St. Paul Ry. Co., et al.*, 26 I.C.C.R. 1, at p. 114, the following language occurs:—

“Defendants introduced some testimony as to the increased cost of transportation by reason of higher price of equipment and greater wages paid employees, but such statements can have little weight when presented in the abstract with no attempt to allocate charges or consider corresponding reductions in the cost of transportation resulting from greater efficiency.”

The principle, therefore, remains as the Board has always held, that wherever particular costs are available in justification of an increase of a long standing rate, they should be furnished, and their absence subjects the railway to the presumption stated. I shall refer later on to the specific nature of the information required by the Board to be furnished in this case, and the effect of its not being forthcoming is considered both with regard to the application in the special circumstances, of the presumption referred to, and to the special features of the rate arrangement herein referred to.

Having pointed out in the foregoing analysis of the information as to the traffic submitted by the railways in support of the increase what, from the information submitted, would appear to be inequalities which would result from the application of the proposed rates to the important traffic built up on the present rates it will be useful to consider the extent to which the proposed schedule is justified by the arguments of the railways, and how far they have satisfied the onus resting upon them to establish their reasonableness and necessity.

II.

The grounds upon which the railways seek to justify the proposed tariffs may be briefly stated as follows:—

- (a) The increased cost of the service to the railways.
- (b) The increased price of milk since present rates effective.
- (c) The increase in the volume of traffic—entailing upon the railways the expense of further facilities for carrying and handling the traffic.

Were the milk rates based upon the ordinary conditions as to service, liability, and other elements, that attach to relations between shipper and carrier, the grounds referred to as the basis of the new, and increased, rates, if established by the railways, upon which the onus rests, would be entitled to every consideration. But, the history of the traffic, from its inception in 1886, and from thenceforward shows that, it was *a very exceptional arrangement, and was conditional from its inception upon the shipper and consignee performing certain acts which they would not be required to perform in ordinary shipments of freight or express.*

See evidence of Mr. J. O. Apps, General Baggage Agent, C.P.R. at hearing of complaint of Montreal Milk Shippers' Association, Volume 130, p. 5142.

To the same effect is the following evidence given by Mr. Apps, reported, Volume 130, p. 5140-41:

Q. The arrangement under which these rates were established involved, from its inception, did it not, the performance of certain services by the shippers and consignee?—A. Yes.

Q. What did they consist of?—A. That the shipper should load the full can on the incoming journey and that the consignee would take delivery at the car door on arrival at destination.

Commissioner McLEAN: Were those conditions the outcome of an agreement in the first instance, or were they something imposed by the railway?—A. I understand it was an arrangement made in 1886.

That exceptional condition—which, in a very large measure, removes the traffic from the ordinary elements of consideration and makes it largely dependent upon performance of reciprocal and exceptional obligations foreign to the ordinary relations of shipper and carrier, was further emphasized, in the same case, at p. 5199, by the following statement of Mr. Beatty, then appearing as counsel for the C.P.R.

“As I explained this morning, there is no doubt but that the reciprocal services performed by the carrier and shipper in respect of this peculiar commodity, handled in the way in which it was and is handled, was part of the arrangement whereby these very low rates and this fast service were obtained.”

At the time that these statements were made on behalf of the railways (June 22, 1911) the railways were opposing an application to the Board by the shippers for a lower rate; for the continuation, at a lower rate, of the 4-gallon movement, established in 1893; and for more stringent conditions as to the railways responsibility for the

ance with each term of each rule is required of the shippers by the carriers, then if that does not relieve the situation as complained of by the applicants, *this application can be renewed.*"

The application, it is to be borne in mind, was by the shippers, inter alia, for a *reduction* of the rates. The consent disposition effected by Order No. 15413, apparently worked satisfactorily, as the application was not renewed. The traffic, in the meantime, has substantially increased.

The increased price of milk to the consumer was dealt with at the hearing of the case in 1911. It was referred to again, not as a reason for increasing the existing rates, but as justifying them and as a reason why the application for their reduction should not be granted.

It is alleged by the railways that the cost of milk to the consumer had increased since 1886 by 40 per cent (volume 130, p. 5145). Mr. Flintoft now argues at the hearing of this case—Volume 310, pp. 8126-7; that the price of milk has increased 62 per cent since 1911, and that the rates per quart in the larger cities stated was then:—

Vancouver.. . . .	15 Cents.
Calgary.. . . .	14 "
Winnipeg.. . . .	13 "
Ottawa.. . . .	13 "
Montreal.. . . .	14 "
Toronto.. . . .	14 "
Quebec.. . . .	14 "
St. John.. . . .	14 "

Variations in this price in some of the centres named have taken place. The price to the consumer of this essential food commodity is, always has been, and probably always will be, from its very nature, fluctuating. Eggs, butter, meat, and several other food commodities of universal consumption show rapid fluctuations in price, largely upward of late years, yet the increase in price to the consumer of such food commodities has never, of itself, justified an application by the railways for permission to increase the cost of their carriage—even as ordinary freight—much less would such circumstances of fluctuation be a factor in aiding the railways to justify the increased tolls asked under the special and reciprocal arrangement under which this traffic has been carried for 33 years, during which time the fluctuations in price must have been very considerable. I would unhesitatingly say that the justifiability of considering this as a factor has not been established.

It is also argued that the conditions of carriage, the increased volume of the traffic, entailing, as is alleged, increased expense to the railways in the handling, billing, carrying, and delivering of milk, are all factors justifying the increased rates asked for. As to the conditions of carriage, the weight of the argument is difficult to see. The present conditions, which the railways do not propose to change, are the result of the application by the shippers in 1911, and as I have pointed out, were agreed to by the railways, and have been acted upon without complaint for upwards of eight years. It was never argued, until now, that because of them the rates should be increased. We were urged (volume 130, p. 5200) to give them a trial and if not satisfactory, after trial, the then current application by the shippers for a *reduction of rates* and more stringent conditions of carriage, might be renewed. The application was not renewed, the conditions mutually agreed upon appear to have been mutually satisfactory in their operation, and it would, it seems to me, not only be unreasonable, but unjust to base a claim upon them now for the increases asked for by the railways.

The argument as to increased volume of traffic justifying the increased rates, deserves but a further passing comment. It is a factor always sought for by the railways, and an element which operates in reduction, rather than increase, of cost of carriage. It was admitted, as I have shown, at the hearing in 1911, by counsel for the C.P.R., that the milk traffic had grown to such an extent that it was difficult to change the system under which it had been carried since 1886. (Volume 130, p. 5200). It has

grown substantially since then, and, with the growth of the country must proportionally increase. It is no more an argument to-day in favour of increasing the rates than it was in 1911 in favour of retaining the present rates against an application to reduce them, and, in my opinion, it lacks the merit of consistency.

The railways further argue that the cost of handling this traffic has been further increased by the necessity imposed upon the railways of furnishing further facilities, additional baggage cars, more clerical work in billing, etc., and more men in handling returned empties, and shipments at junction points, and that with the upward curve of wages and costs generally, these must be off-set by an increase in revenue. This argument is largely answered by what I have said in a previous paragraph as to conditions of carriage. The railways agreed to those conditions. They accepted, as incident to the burdens of a traffic they say they did not relish, the results of those conditions in so far as they imposed additional burdens upon them with all that they involved, present and future, as part of the reciprocal obligations which are the basis of this special traffic. This is clearly set forth in the following statement, by Mr. Flintoft, at the hearing: Evidence volume 310, p. 8122:—

“In the year 1911 the basis of milk rates was protested and very thoroughly inquired into, as a result of which the Board issued Order Number 15413, which upheld the basis of rates and laid down certain regulations in regard to the carriage of the milk traffic, which generally increased the burden of service upon the carriers, in connection with various features, such as loading and the giving of receipts and taking care of the traffic generally.”

Although the burden of proof is on the railways, under the decisions referred to, of showing extra cost attributable to the particular commodity carried under the tariff proposed to be increased, where, as is shown in this case, the tariff has been in force for so long a time, and, particularly, under the special reciprocal conditions upon which it was originated in 1886, and thereafter maintained, I am unable to find any evidence of increased cost attributable to this traffic. The railways have contented themselves with references to the well known high level and upward trend of every factor of cost of operation generally, asking the Board to apply its knowledge of such to the special commodity in question. I do not read the decisions cited as justifying such a procedure. Even if, on the decisions referred to, it is alleged that general representations as to increased cost are sufficient to rebut the presumption as to the unreasonableness of an increased rate as compared with the theretofore existing rate of long standing, the special reciprocal conditions of the tariff on which the traffic was built and maintained would render it essential, as regards this particular case, that the burden of proof be fully satisfied by the railways. I cannot find any suggestion that for the specific purpose of serving this traffic the railways have had to build and put in use any additional baggage cars. It is true that loading platforms have had to be erected by the railways. They would be infinitesimal in cost in ratio to the volume of traffic and increased revenue derived therefrom. They would, also, be part of the burden the railways assumed in 1886 when entering into the reciprocal arrangement, and which they confirmed by the acceptance of the conditions of the order disposing of the application to reduce their rates. The milk moves largely on local trains, in baggage cars. If, in any specific cases (and they are not mentioned) an additional baggage car had to be put on a train to serve the milk traffic it would only be because the volume of movement necessitated the additional accommodation for milk, as it might do in the case of baggage. But, however, that may be, the Board cannot, and should not, in a case like the present, be asked to presume that extra accommodation and service was, in specific cases, or in a percentage of cases to be guessed at, provided by the railways, and by some means, other than by evidence which it is clearly the duty of the railways to furnish, to arrive at the additional cost involved.

The whole situation—based upon the inauguration of the traffic 33 years ago—and continued practically uninterrupted ever since—is exceptional and cannot be regarded or be dealt with upon the same principles as an ordinary traffic rate. It is, as the railways squarely admit, founded as to the details of service upon special and reciprocal obligations of shipper and carrier. The Board can ignore the arrangement, if it were thought unduly onerous, but, even if the evidence pointed towards such a conclusion (and in my opinion it does not) the fact that the railways in 1911, confirmed the original arrangement, with the changed conditions of carriage, preclude any such conclusion as to the unreasonableness of the arrangement so far as either party was concerned. The service involves special features foreign to the ordinary contract of carriage, and cannot be said to be unfair to the railways. It involves services to be performed by the shipper, foreign to the ordinary contract of carriage, in consideration of which the railways agreed upon a low rate of remuneration for what services they would have to perform, practically reduceable to the giving of space in its baggage cars for the cans of milk loaded therein by the shippers, and the carriage and delivery of them at the baggage car door at destination to the consignees. What the railways ask is that the value of their service shall be increased proportionately with general increases of cost of the general operation of railways. But the value of the special and unusual services contributed by the shipper and consignee have increased in the same proportion, yet no consideration is given to that extra cost. My view is that the services, respectively, of shipper and consignee, contributed under the special arrangement for this traffic and which were the considerations, originally, and during 33 years, for the alleged low scale of tariff, are, proportionately and relatively, as valuable to-day as factors in the arrangement as they were when it was originally made. To say that the services of the railways were to be appraised now at a higher relative value than in 1886, 1891, or 1911 to those of the shipper and consignee would have the effect of destroying that reciprocal contribution of service which the railways admit was the foundation of the original special arrangement, and would disturb its balance in a manner unfavourable and unfair to the shippers.

Although possibly different considerations might suggest themselves were the railways asking to place this traffic upon a different basis, thereby ridding themselves of the original and reciprocal obligations, yet as they affirm the arrangement, while seeking to better its terms at the expense of the other parties to it, I can only deal with the situation as one resting upon the same reciprocal obligation with a view to preserving the equities, or relative rights of each party.

The railway companies (C.P.R. and G.T.R.) submitted since the hearing, statements purporting to show the earnings of the milk traffic for representative months on a car-footage and car-mileage basis, as follows:

STATEMENT SHOWING TOTAL REVENUE FROM MILK TRAFFIC, EASTERN LINES, JANUARY AND JULY, 1919.

C.P.R.—

1. Total Revenue—

Present.. . . .	\$30,919 10
Proposed.. . . .	39,079 96

2. Total car foot miles.. . . .	6,807,579
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3. Plus 25 per cent working space in the case of L.C.L. traffic.. . . .	8,064,691
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4. Revenue—

Per car foot—

Present.. . . .	3,834 mills.
Proposed.. . . .	4,845 "

Per car mile 60-foot cars—

Present.. . . .	23'004 Cents.
Proposed.. . . .	29'07 "

STATEMENT OF MILK TRAFFIC, JANUARY AND JULY, 1919, SHOWING EARNINGS, CAR FOOT MILES
AND CAR MILE.

G.T.R.—

1. Total Revenue—	
Present.	\$30,125 75
Proposed.	36,396 85
2. Total car foot miles.	7,182,481
3. Plus 25 per cent for working space in case of L.C.L. traffic.	8,559,395
4. Per car foot mile—	
Present.	3.519 mills.
Proposed.	4.252 "
Per car mile 60 foot cars—	
Present.	21.11 Cents.
Proposed.	25.51 "

These statements are prepared upon the same basis and are submitted in support of an argument that the same principles as to earnings applicable to express cars should be applied to baggage cars and the milk traffic therein. Mr. Flintoft refers in this connection to the Judgment in the Railway Mail Rates and Express Rates Case, and argues that traffic carried in baggage cars should be paid for and be treated in all respects as regards car mileage earnings as that carried by express car. I have referred to, and emphasized the fact that the general well known principles of rate making do not, by reason of the special circumstances and the nature of the special reciprocal arrangement under which this traffic is carried, apply to the tariffs proposed and, consideration of the argument advanced is not, therefore, necessary to the conclusion I have arrived at. I would, however, observe that, in so far as, in the special circumstances reviewed as regards this traffic, it is necessary to deal with that contention, it would appear, as a primary difficulty, that this is not express traffic.

The contention that a baggage car, utilized for this special purpose is to be treated as in the same class as a mail or express car, in my opinion need not be passed upon here.

The railways gave no particulars as to the increased cost at the hearing. They referred only to the increased cost of operation generally, and, as incident to that, and without giving particulars thereof, to the alleged general factors tending to increase cost. I have dealt with these general factors, and am without data, figures, or particulars to deal further with any other question of increased cost applicable to this traffic. After the hearing, and by letter, dated September 13 last, the railways were notified that the Board considered that the proposed increase in rates indicated in tariffs filed, and held under suspension, had not been so clearly and sufficiently supported and justified as to warrant any other Order being made except for continuance of suspension of the tariffs. That the Board considered that the railways had not discharged the onus resting upon them of showing the necessity for increased rates or reasonableness of tariff; and the railways were required to submit and serve upon the opposite parties, statements of the traffic, showing *inter alia*:—

3. The extent, nature, and particulars of any factors alleged to have contributed to the increased cost of the traffic, and necessitating and alleged to justify, the increase in rates.

Beyond such general factors as have been put forward and which have been dealt with in the foregoing pages, no particulars of the specific increase cost are forthcoming as a result of the Board's direction. Having disposed of what has been put forward as alleged justification of the tariffs, I am of opinion that the railways have not discharged the onus imposed upon them of justifying the tariffs as to the reasonableness of the increases asked, or with respect to the specific traffic, as to the necessity for such increased revenue as is asked.

Reference was made by Mr. Scott, counsel for the National Dairy Council, at the hearing, and subsequently to the New England rates for milk carriage, and to the effect of the decisions of the Interstate Commerce Commission, in Milk and Cream Investiga-

tion (Case No. 8588) I.C.C.R. 40, p. 699; Hood v. Delaware & Hudson Co. (Case No. 765) I.C.C.R. 43, p. 375.

In the conclusion I have come to, it is not necessary to do more than to point out that the traffic mentioned is carried under lesser rates and with more service by the railways than is the Canadian traffic. Mr. Marshall filed a statement of these rates, which I quote to the extent of 150 miles.

RATES ON MILK.—Comparison of present and proposed Canadian rates per 8 Imperial gallon can with present "New England" scale of rates per 40 wine quarts (8½ Imperial gallon) can.

Miles. Not Over.	Present Canadian. Cents.	Proposed Canadian. Cents.	New England. Cents.
10	15	17	11·4
20	15	18	11·4
30	15	19	13·9
40	15	20	13·9
50	20	21	16·1
60	20	22	16·1
70	20	23	18·0
80	20	24	18·0
90	20	25	19·7
100	20	26	19·7
110	20	27	21·3
120	20	28	21·3
130	20	29	22·8
140	20	30	22·8
150	20	31	24·2

It will be noted that these rates include heat in winter and refrigeration in summer and return of empty containers, services not performed by the Canadian railways, and all involving a large percentage of the cost of carriage. About 80 per cent of the Canadian milk traffic moves from 0 to 80 miles; 93 per cent up to 100 miles. Comparison of the rates, with consideration of the extra, and valuable, service by the American roads, to conserve this important food in the best condition for consumption by the consumer, will indicate the barren nature of the service proposed to be given in Canada at a higher rate of carriage. It is true that these rates have temporarily been increased by 25 per cent, but, with that increase, they are lower than the Canadian proposed rates, plus the valuable service mentioned. The volume of the traffic carried is said to justify the low rates. The same argument, viz.: the steady increase of traffic in Canada upon the present rates, would serve to refute the necessity for any increase in Canadian rates.

The milk traffic did not participate in any of the general rate increases. No application was made with respect to it. If the arguments advanced at the hearing, and subsequently, with regard to the largely increased cost of the traffic in common with and upon the same basis as all other traffic, had been applicable to this special reciprocal arrangement, there would have been no good reason why this traffic should not have been dealt with on that application. But I am of opinion that it was not so dealt with by the railway because it was regarded as a special feature of traffic, built, as counsel for the railways admits, upon a special reciprocal arrangement, and so maintained, not carried on freight trains, or by express, and not being entitled, from its nature, to share in the increase granted such general traffic upon the basis of advances in cost of carriage and operating generally.

Reference has been made by counsel for the railways to the Judgment of Sir Henry Drayton, when Chief Commissioner, of this Board, in the Express Rates Case (July 17, 1919). I refer to the disposition of commodity rates, particularly cream, by the Judgment, and quote the following from page 164:—

I am ready to admit that the value of all commodities has very greatly increased since commodity rates first came in, and that one of the elements in

rate making relates to the value of the commodity carried and to the increased risk undertaken. As against the shippers and vendors of these articles of daily necessity, there is no difficulty in the express companies justifying a reasonable increase. I do not think, however, that the matter ought to be so considered at the moment. The companies will obtain a fair measure of increase in their first-class and second-class rates. That increase, it is hoped, will prove sufficient to properly maintain the companies and the business; but whatever increase is placed on these commodities would form a reason (a comparatively small one it is true in most instances, but still a reason) for further increases in the charge made to the consumer. In the past experience it would appear that the increase in charge to the consumer would be much greater than the increased cost per pound or per pint of the commodity. The cost of living is still mounting. As I see it, it is not to the public interest, and not in the interests of the express companies themselves, to afford the excuse that a raise in the price of transportation of these essential commodities would give for still higher charges against the public. Over and above the essential interest of the consumer, a further and very real ground for withholding increases in these commodity rates, unless it proves to be absolutely necessary, lies in the position of the producer. The commodity rates are the producer's rates. He produces in quantity and ships in bulk. On the pound unit of production, his resultant profit is small. His costs have greatly increased. I would dismiss the companies' applications, in so far as the commodity rates are concerned; entirely, subject to the right of the companies, should it be found impossible for them to make both ends meet, to renew the application. I have mentioned only the chief commodity rates, but would deal with all on the same basis.

The quotation is singularly applicable in relation to the present application. Where the late Chief Commissioner says: "The companies will obtain a fair measure of increase in their first and second-class rates"—the same might be said of the railways, relatively to their general increases. And the reference to the increase in producers' costs are also pertinent here.

The zone feature of this traffic is deserving of consideration from shipper and carrier. At present there are but two zones, 0 to 40 miles; 40 to 150 miles. The proposed tariff covers the more extended zones mentioned. Mr. Scott, for the National Dairy Council, suggests 25-mile zones. It might be desirable for shippers and carriers to consider this feature, and possibly consideration of the analysis of the traffic may lead to some such improvement in this respect. This is a matter for consideration of shippers and carriers in ease of the traffic generally.

In my opinion there should be an order disallowing all the tariffs in question.

The Chief Commissioner, the Assistant Chief Commissioner and Commissioner Rutherford concurred.

OTTAWA, December 18, 1919.

File 16939.13.

COMMISSIONER GOODEVE:

I regret that I cannot concur fully in all the findings in the judgment of Mr. Commissioner Boyce.

My impression from the evidence is that owing to the largely increased cost of transportation generally, that this traffic should bear its fair proportion of that increase. I do not think, however, that this amount can be arrived at by an analysis of the statements of costs submitted by the railways.

As pointed out in Commissioner Boyce's judgment, this traffic is carried in a peculiar manner, and a portion of the costs that would be attributable to ordinary traffic does not apply in this case.

The railways were asked to submit statements that would furnish the necessary data showing the increases that would apply to this particular traffic. They failed to do this. Without this information, and in view of that portion of the judgment dealing with commodity rates in the Express Rates Case, as quoted by Commissioner Boyce in his judgment, I agree that the tariffs should be disallowed.

The Deputy Chief Commissioner concurred.

February 12, 1920.

Application of the Canadian Manufacturers' Association, per J. E. Walsh, Toronto, Ont., for an order directing the extension of the Canadian Car Service Rules covered by the Board's Order No. 906, so as to provide for what is known as the Average Demurrage plan which now forms a part of the National Car Demurrage Rules in force in the United States, with approval of the Interstate Commerce Commission.

File No. 3775.3

JUDGMENT.

I.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Application is made for average demurrage. More specifically it is set out that the demurrage on all cars held for loading or unloading shall be computed on the basis of the average time of detention to all cars released during each calendar month. The method of computation outlined is that a credit of one day shall be allowed for each car released within the first twenty-four hours of free time. A debit of one day shall be charged for each twenty-four hours, or fraction thereof, that a car is detained beyond the first forty-eight hours of free time. Not more than one day's credit is to be allowed on any one car, and in no case is more than five days' credit to be applied in cancellation of debits accruing on any one car, thus making a maximum of seven days, including Sundays and holidays, that any car may be held free.

At the end of the calendar month, the total number of days credited will be deducted from the total number of days debited, and the demurrage charge per day charged on the remainder. If the credits equal or exceed the debits, no charge is to be made for the detention of the cars, and no payment is to be made to the consignor or consignee in respect of such excess of credits. Credits in excess of debits of any one month are not to be considered in computing the average detention for another month.

Those taking advantage of the average plan are to forego the advantages of the weather and of the bunching rules.

A consignor or consignee taking advantage of the average plan may be required to give sufficient security to the carrier for the payment of balances due by him at the end of each month.

The question was also gone into in connection with the amendment of the Canadian Car Demurrage Rules which was made on July 28, 1917, effective by order on August 20, 1917. In the decision in that case, reference was made to the various submissions bearing upon average demurrage, and it was stated in the judgment that the Board would endeavour to ascertain whether average demurrage had worked a real benefit in places where it had been tried, it being at the same time stated that from the best information had at the previous hearings the contrary was the case.

In re Car Demurrage Rules, 24 Can. Ry. Cas., 180, at p. 196.

Under the date of June 16, 1919, on direction, a letter was issued by the Board setting out that in view of the many changes which have taken place in railway matters since the judgment on the demurrage rules, as above referred to, had issued, the Board was prepared to arrange for a hearing, or hearings, if the parties interested desired to add to the record in the case.

The material received was concerned mostly with opinions on the principle involved, and, in general, the opinion was expressed that the matter might stand for decision on what had been submitted. In general, it does not appear that there is such additional material evidence available in regard to the working of the system as would justify a further hearing.

The matter as presented may be subdivided into the following headings:—

(a) Whether when the consignor or consignee unloads within the free time allowed by the demurrage rules, he has a *right* to apply the difference between the free time allowed and the time actually taken as a credit on another car which is not loaded or unloaded within the free time.

(b) The advantage of such proposed system of credits as an incentive to quicker loading or unloading.

(c) The general effect on car movements.

II.

As bearing on the question of *right*, which matter, it appears to me is fundamental, some detail references to the notes of hearing are necessary; and it may be pointed out in this connection that reference is also made to earlier applications of the Canadian Retail Coal Association of London, Ont., and the Wallaceburg Sugar Company.

In the Wallaceburg Sugar Company's case, application was made as regards a particular commodity; in the case of the Canadian Retail Coal Association, the application was also as to particular commodities, coal and coke.

The application of the Wallaceburg Sugar Company was not limited by the use of the adjective "optional." The application of the Canadian Retail Coal Association was. So is the present application as developed; but it does not appear that the adjective "optional" makes any vital difference.

In the application of the Canadian Retail Coal Association, Mr. Hay stated, at p. 2922, vol. 124:—

" when they allow us 72 hours for unloading a car of coal they must of necessity in order to arrive at a proper business basis have figured on the detention of that car. That, I think, is a reasonable and fair proposition. Now then, when that car is placed on our siding we have 72 hours to unload it. We will probably unload the car within the first 24 hours In as much as we have already paid the railway company for the detention of that car for two days they have not given us any allowance for that dollar we have been fined on the other car" (that is the car held over the 72-hour period), "and that should stand over against the time that is to our credit."

In the same case, at p. 2959, Mr. Hay said: "We were applying for a principle we think fair and that should be carried out."

At the hearing in Ottawa, the following discussion took place as bearing on the point in question, vol. 179, pp. 4576-4578:—

"Commissioner McLEAN: Is it your position, Mr. Walsh, that a shipper has a right to hold a car for the free time?"

"Mr. WALSH: Absolutely not. I have not held that opinion."

"Commissioner McLEAN: Then your position would be that it is the reasonable maximum time allowed for unloading?"

"Mr. WALSH: I have always held this position, I have advocated it in our paper and through circulars to our members, that 48 hours or 72 hours was the maximum time allowed, but it was not expected they should take that time to unload equipment. When they do that they are depriving themselves of a proper facility, and they are depriving somebody else. But we think it is a reasonable time to allow in case of emergency or of accident. I think it would be fair to say this, that the people I represent are not laying themselves out to delay cars or to take advantage of the free time; their purpose is to unload as quickly as they can and get the cars to load up again. As I say, and I want to repeat, our people realize that. Our manufacturers hold that cars are for the purpose of transporting freight from one point to another, that they are not for storage purposes, and we try to the best of our ability to unload as rapidly as possible. but we have got to have the conditions, they must be favourable.

"Commissioner McLEAN: Following that, if the free time simply represents the maximum reasonable time for unloading, is it quite fair to say that because a man unloads within that time that the portion of the unused should be applied to another car? That looks at it as a matter of right. He has a right to so much time within two days. If he is able to unload a car and have, say, one-half or three-quarters of the day unused, what has that got to do with another car?"

"Mr. WALSH: Simply because another car cannot be got at.

"Commissioner McLEAN: But if you say two days is a reasonable time for unloading does it not mean that each car should stand by itself?"

"Mr. WALSH: If it could be worked out theoretically perfectly.

"Commissioner McLEAN: Leaving aside theory, is not that your position? I just want to understand your position.

"Mr. WALSH: Possibly that is correct.

"Commissioner McLEAN: I just want to see what your position leads to.

"Mr. WALSH: Yes, but that is not possible.

"Commissioner McLEAN: But either the two days is a right or it is not. If he does use the two days on one car, he has a right to the unused portion to apply on another car. Either it is that or it is a reasonable maximum time for unloading, and whatever he unloads within that time it stops at that. It is either one position or the other.

"Mr. WALSH: Certainly, if the conditions are ideal. We had a good illustration of it yesterday in connection with the movement of cars.

"Commissioner McLEAN: We have to take one horn of the dilemma. It is either a right or a reasonable maximum. If it is a reasonable maximum it applies on the one car. I may be wrong, but it seems to me that that is a fair conclusion from the discussion.

"Mr. WALSH: That is all."

In supplementary summary and comment in his letter dated October 18, 1913, Mr. Walsh took, in substance, the position that the two days free time referred to had become a right by usage. The following extract from his letter is material:—

"At page 4,577 Commissioner McLean asked whether the two days' free time allowed was a right or not. It is a right in the sense that common usage has made it so. It has been well established that a receiver of freight is entitled to notice of its arrival and to a reasonable time within which to remove it. It is the same right as he has in respect to less than carload shipments on which he is given from 72 to 96 hours, and if the freight moves through the freight sheds the carrier has to provide storage and is liable under the bill of lading conditions as carrier for that length of time.

"As regards carload freight, the carrier does not have to provide such facilities. All that is required to do is to place the car for unloading. The bill of lading conditions determine the liability of the carrier and the length of free time within which the receiver has to remove the goods.

"This point was seized upon by the representatives of the railways and dealt with at some length both by Mr. Beatty and Mr. Biggar at pages 4583 and following and 4605, 4606, and 4607. Both of these gentlemen took the position that the 48 hours, as suggested, was not a right and, therefore, the public was not entitled to it. The Board is familiar with the origin of the rule and it is, therefore, unnecessary for us to enlarge further on the subject except to point out that the records of the Canadian Car Service Bureau show that the public does not as a rule take 48 hours to unload, neither has it ever been contended that cars should be held for that length of time. It is, however, our contention that we have the right in cases of necessity to that length of time. We respectfully suggest to the Board that in dealing with this question actual conditions must be taken into consideration. Mr. Biggar dealt entirely with conditions in Great Britain. These are not applicable here. The nature and volume of traffic are entirely different."

The same position is adopted in the correspondence on the Board's files, including the correspondence received in reply to the circular letter of June 16, 1919, already referred to.

The Dominion Sugar Company, in a letter dated January 17, 1916, says that in checking up all cars into their yards the average time of unloading is less than 24 hours, or less than one-half the free time; and it was submitted that the company felt that "as though it would be an injustice to ourselves to have each individual car charged for demurrage, in view of the fact that hundreds of cars are unloaded within even 12 hours time."

The Canada Crushed Stone Corporation, Limited, made the following query: "If the shipper can save the railway money by the quick loading of cars, why should he not be credited to offset the loss when the railway cannot supply cars promptly?"

The T. H. Taylor Company, Limited, stated they thought it was only fair that the shipper should be allowed something for cars which were unloaded within the free time allowed.

The Algoma Steel Corporation, Limited, stated that it had been paying several thousands of dollars annually for demurrage, and it seemed to said corporation that it should be credited for cars which it returned promptly; that is, before the free time was up.

The Steel Company of Canada, Limited, pointed out that it unloaded a large portion of its cars within the free time. It took the position that it was unfair it should be penalized at a heavy rate for cars taken in excess of the free time when it had "earned money for the railways on so much of their traffic." It expressed the opinion that if the penalty was a fair one for the use of the car, the railway should be willing to grant a credit to the consignee who gives up cars to them in less than the free time.

Without multiplying citations, the position is, in substance, that the free time for loading or unloading exists as a matter of *right*, and that whatever is done by the consignor or consignee in regard to loading or unloading within the free time is in derogation from his strict rights and is something for which he should receive a credit.

The great majority of cars are, under the existing demurrage rules, loaded or unloaded within the free time, there being no incentive such as is argued for to induce extra expedition in loading or unloading, so as to obtain credits thereby. It follows that the loading or unloading within the free time is carried out not with any idea of benefiting the railway, but because the business conditions of the consignor and consignee concerned make it a good business policy to do so.

In analyzing the question of the *right* which it is contended exists, reference may be made to some decisions of the Board. In dealing with the application of the Wallaceburg Sugar Company for average demurrage, which was heard in 1909, the Board used the following language:—

“The ‘average system’ suggested, in my opinion, is not justifiable under the contractual relations which exist between the consignor or consignee (as the case may be) and the railway company. The contract of carriage is, that the railway company will carry the goods to the point where they are to be unloaded to the consignee, who in turn is to unload and release the car with all reasonable despatch. For more certainty and uniformity of practice, rules have been adopted which say in effect that ‘reasonable despatch’ for unloading shall not, in the case under consideration, exceed 48 hours. If a man exceeds this reasonable time in unloading, he is penalized by a charge of \$1 per day for the extra time he may hold the car. Such a provision is in the public interest, because it makes a consignee prompt in releasing cars consigned to him, and thus increases the supply of available cars for the shipping public.”

“The intention is that, under the Car Service Rules, each car shall be dealt with by itself and without reference to the movement of other cars. This insures equal treatment of the smaller shipper or consignee with the larger one.”

Wallaceburg Sugar Co. v. Canadian Car Service Bureau, 8 Can. Ry. Cas., 332.

At a later date, in dealing with an application of the Canadian Car Service Bureau, the Board used the following language:—

“Car Service Rules constitute a code dealing with the question of average reasonable time for delivery, delays to cars, and penalties for such delays.”

Application Canadian Car Service Bureau, for ruling as to apparent conflict in conditions of Bill of Lading and Car Service Rules, File 3678. Board's Orders and Judgments, December 1, 1916, 385, at p. 387.

In the matter of the complaint to the *Wood Coal Company of Brantford, Ont., file 1700, pt. 2*, and the complaint of the *Barber-Ellis, Limited, Brantford, Ont., file 1700.56*, the question of the construction of rule 2 of the then existing Car Service Rules was involved. Under this rule, 24 hours' additional free time was allowed for clearance of customs. This was in addition to the 48 hours free time. It was contended, in substance, that the whole period of 72 hours was available for the clearance of customs and for unloading. It was held that the clearance of customs must be effected before the car was in a position to be unloaded, and that the time allowed for clearance of customs as compared with the time allowed for unloading must, therefore, be prior; that is to say, the time allowed for clearance of customs stands first on the list, and under the rule the 48 hours for unloading runs from the termination of the time allowed for clearance of customs.

The question of *right* herein involved has been dealt with from time to time in English decisions.

The Lancashire and Yorkshire Railway Company having proposed that on and from the first day of March, 1895, it would levy a charge of sixpence per wagon per day under the title of siding rent, upon all wagons containing coal or coke, and remaining undischarged upon sidings belonging to the railway company for a longer period than four clear days, the matter came before the Railway and Canal Traffic

Commission in *Manchester and Northern Counties Federation of Coal Traders' Assn. v. Lancashire and Yorkshire Ry. Co.*, 10 Ry. and Can. Traf. Cas., 127. The following references to what is set out in the decision are pertinent:—

“The carrier’s obligation is to deliver the wagons within a reasonable time.”—*Ibid. per Collins J. p. 133.*

Carrier’s obligation.—“All that he undertakes and all he receives consideration for is the carrier’s duty, which ends after he has delivered the goods—that is, has put the goods in a position where the trader can take delivery, given him notice of the fact, and left them there for a reasonable time, such as would enable the trader, with ordinary appliances, to get his goods out of the wagon.”—*Ibid. pp. 133, 134.*

Termination of carrier’s liability.—“It clearly determined when a reasonable time had elapsed—a time within which, on the principles I have laid down, the trader, acting reasonably, might have taken the coals out of that wagon; and that reasonableness, I think, must be determined, not by reference to the after-use which it would have been convenient for the trader to put that wagon to after the coals had arrived, and he had the opportunity of taking delivery, but with reference to the fact that the carrier’s obligation as an insurer remained up to the expiration of that reasonable time.”—*Ibid. p. 134.*

The point was raised that the railway must be deemed to have conceded the right

to the traders to use these wagons as shops during the four days—that is, during the four days they admit to be covered by the rate,

Collins J., said:—

“I regard this as trying to fix an extreme limit up to which they are content to bear the obligation of carriers, and to deem it as covered by the rate—and they make it an extreme limit in order to meet the exigencies of the consignees.”—*Ibid. pp. 137, 138.*

In *Midland Railway Company vs. Black and others* 10 Ry. & Can. Traf. Cas. 145 the question of average was dealt with by Wright J., at pp. 148 and 149, as follows:—

“Then Mr. Chitty, on this part of the case as to the charge, raised a point which is of great importance, and, *prima facie*, one which has a great deal in it. He said it cannot be reasonable to pay the company six pence beyond the four days in cases in which, as in the majority of cases, the bulk of the traffic is unloaded by the traders within four days; so that the company getting the benefit of the accommodation saved by that expedition on the part of the traders as regards something like 90 to 95 per cent of the traffic, it cannot be fair that the company should have that advantage, and also be paid for what happens after the four days. But I do not think such a matter of set-off as that it is competent for us to consider. The trader has no right to the four days. It is not as if he waived anything by unloading within the four days. The trader is bound to discharge in a reasonable time. If it is reasonable for him to discharge in two or three days and he does so, it is no more than his duty, and, as Sir Frederick Peel pointed out, after the four days, supposing the four days is the right time, the character of the company is a new and altogether different one. He is now a warehouseman; and how can the amount which he is entitled to charge for warehousing these trucks (warehousing is hardly the right word for it but it conveys what I mean) be affected by the circumstance that he has not been put to all the expense as a carrier or as a conveyor of the traffic to which he might have been subjected?”

The principle of average demurrage was before the Railway and Canal Traffic Association in *North British Ry. Co. v. Coltness Iron Co., Ltd., et al, Caledonian Ry.*

Co. v. Coltness Iron Co., Ltd., et al Glasgow and Southwestern Ry. Co. v. William Baird & Co., Ltd., et al., 14 Railway & Canal Traffic Cases, 246.

The matter involved came before the Railway and Canal Traffic Commission as arbitrators appointed by the Board of Trade to determine certain differences between them and the defendant in respect of certain charges which applicants claimed to be entitled to under section 5 (4) of the schedule to their several Rates and Charges Order Acts, 1892, on the ground that the defendants had detained wagons belonging to the applicants for an unreasonable length of time.

It was contended for the defendants that the true view was that if a railway company gets wagons released it does not matter whether they are sent out in order of arrival or otherwise. The decision in this case was given by Lord MacKenzie. It was set out that under Section 5, subsection 4 of the schedules of the Act of 1892, the consignor or consignee must have a reasonable time to put traffic in or to take traffic out. It was stated that—

“A full margin must be allowed to cover the reasonable maximum time to enable the consignor or consignee to give or take delivery.”—*P. 262.*

In dealing with the question of Average, the following language was used:—

“It is necessary to refer to an argument used by counsel for the traders in support of what has been called the average principle. This consists in crediting to the trader whatever free time is saved. If over the whole period of a week, or a month as the case may be, it is ascertained that the total free time has not been exceeded by the total number of wagons, then, according to this contention, no demurrage is due. This principle, to my mind, is founded upon a fallacy. A trader is not entitled to keep a wagon for the whole of the free time. His duty is to discharge with all reasonable despatch. If he does this, he does no more than his duty, and is not entitled to credit for the remainder of the free time. This is pointed out in the *Midland Railway v. Black*, by *Wright J.*; see also the statement of *Collins J.*, in *Midland Railway Company v. Sills*. Nor do I think it admissible that the free time allowed both before and after conveyance should be added together, and if the total period is not exceeded that then no demurrage should be due.”—*P. 264, 265.*

The obligation of the carrier under the contract of carriage covers not only transit but also a reasonable time for loading and unloading. Just as the carrier is entitled to a reasonable time in which to deliver, so the recipient of goods is entitled to a reasonable time to demand and receive delivery.

Chapman v. Great Western Ry. Co., Q.B.D. (1879-80) Per Cockburn, J., 281.

“At the same time, the consignee cannot for his own convenience, or by his own laches, prolong the heavier liability of the carrier beyond a reasonable time. When once the consignee has delayed taking away his goods beyond a reasonable time, the obligation of the carrier becomes that of an ordinary bailee, being confined to taking proper care of the goods as a warehouseman; he ceases to be liable in case of accident.”—*Ibid*, pp. 281-282.

Under the bill of lading, section 6, it is provided:—

“Goods not removed by the party entitled to receive them within 48 hours (exclusive of legal holidays), or in the case of bonded goods within 72 hours (exclusive of legal holidays), after written notice has been sent or given, may be kept in car, station or place of delivery or warehouse of the carrier, subject to a reasonable charge for storage, and to the carrier's responsibility as a warehouseman only”

The situation which arises in respect of liability may be referred to. If in the case of two cars, each of which has 48 hours free time, car number one is unloaded in 24 hours while car number two is unloaded in 72 hours, then under the average principle the imputation of 24 hours' credit to number two enables it to be unloaded without any demurrage penalty, but while from the standpoint of the Demurrage Rules the second car is treated as unloaded in a constructive period of 48 hours, the situation is that it has taken 72 hours actual time. Under section 6 of the bill of lading, the carrier would be liable as a warehouseman only after the 48-hour period.

The proposal to apply a credit to the car detained 72 hours is based on the idea that the 48 hours' free time is a necessary incident of the contract of carriage and that during this period the contract of carriage, with the carrier's liability attaching thereto, continues. But in order to make the credit system applicable the contract of carriage on the car in question must have been completed. The transfer of the credit in effect means the transfer from a commodity which has moved under a contract of carriage with the incidents attaching thereto (and after the contract of carriage has terminated to another commodity where the contract of carriage has terminated) that is to say, an attempt is made to counterbalance the contract of carriage as a carrier with the contract as a warehouseman.

Dealing with the question as a matter of *right*, the consignor or consignee has a right to such portion of the free time as is actually necessary, with due diligence, to effect the loading or unloading. If he loads or unloads the car within the free time, that is a closed transaction and there is no credit to impute to a car which takes longer than the free time. The free time allowed is a maximum reasonable average. The Board has in various instances, when application has been made to it for extension of the free time on account of the alleged necessity of the consignor or consignee having extra time because of length of road haul or other conditions peculiarly affecting the situation of the consignor or consignee being involved, declined to add to the free time.

III.

While it appears that there is no such basis of *right* as is contended for and while this might properly be taken as closing the matter, it seems proper to consider further the question of whether there are any such conditions in respect of betterment of handling of cars involved as would justify a departure from the principal which, in my opinion, is a well-established one; that is to say, would practical operating conditions justify the abrogation of the principle?

It is argued that the Average Demurrage method affords an incentive to a quicker handling of the cars, and that this enures to the advantage of the carrier.

From letters from Mr. Lincoln, manager of the Traffic Bureau of the Merchants' Association of New York City, which are filed by Mr. Walsh, said letters being dated May 28 and June 9, 1913, the following excerpts are taken:—

"The average agreement, by offering certain incentives to the receivers of freight, and particularly the large receivers, results in the more prompt release of equipment, that credits may be obtained to offset debits where demurrage accrues beyond the control of the receiver....."

"As to the shipper or receiver, I am confident that an opportunity to earn credits for the purpose of offsetting debits is a constant incentive to the shipper to unload his car within 24 hours."

The Algoma Steel Corporation contends:—

"Transportation companies benefit by this plan in that they secure the return of equipment promptly, as industries find it an incentive to load and unload and send back the cars as quickly as possible."

In the evidence of Mr. Hay, already referred to, it was set out at p. 2930, vol. 124, that the consignee should, by extension of the credit, be given an incentive to unloading the cars; that this would help the release of cars.

In the evidence given by Mr. Dunn of the International Harvester Company of Canada, it was contended at p. 4553, vol. 179, that it would enable a more economical utilization of labour on the part of the company. It was set out that unloading gangs working on piece work were used, and that if the unloading of cars were not limited by the date of receipt this would permit a continuous use of the unloading gangs.

This is, in effect, an argument that the average system should be used to offset the labour costs of the industry.

Similar evidence was given by Mr. Champ of the Steel Company of Canada, at p. 4537, vol. 179, to the effect that great effort was lost in locating and unloading cars in order of date.

In a submission made by the Canadian Manufacturers' Association subsequent to the circular letter already referred to, it was stated:—

“It is our view and that of a number of manufacturers vitally interested in the question, that the addition of the average agreement in Canada would assist materially in the prompt handling of cars.”

The chairman of the Brantford Branch of the Canadian Manufacturers' Association stated that he considered that the theory of average demurrage was correct, as “it gives the manufacturer an opportunity of making a bonus for exceptional service to offset the penalties when delays occur.”

The Peterboro Board of Trade, per the secretary of its transportation committee, used similar language. It said:—

“We agree with the manufacturers that this average agreement appeals to us as being a fair and reasonable way of dealing between the commercial interests and the railways, and that carriers must recognize the fact that to deliver them their rolling stock in less than the free time allowed must represent some compensation for which they should be willing to give reasonable consideration.”

The same position was taken by the Canadian General Electric Company of Peterboro, which considers that the average arrangement would bring about a more economical use of rolling stock, as it carried a compensation for releasing cars within the free time allowed.

The same position is to be found in a submission from the Canada Foundry Company, Limited. Mr. Dunn, in his evidence already referred to, expressed the opinion that the average system would permit releasing of two cars where one was now released.

The references to the evidence above set out show that the idea of an incentive to quicker handling of cars, as a result of the credits asked for, predicates the existence of the *right* already referred to, and the comments already made are applicable in this connection.

IV.

In addition to what has already been set out, various other advantages are claimed for the system, as follows:—

(a) It will remove the friction arising over the operation of the weather and bunching rules;

(b) It is justified by United States practice and experience;

(c) It is considered as being differentiated from what was dealt with in the *Wallaceburg Sugar Case* in that there is proposed a limitation of credits.

The system is one which enures to the advantage of the large shipper. As bearing on this, various comments from the hearing which took place at Toronto on December 13, 1916, may be referred to. The reference is to vol. 259 of the evidence.

At p. 8445, the Chief Commissioner said: "The average demurrage does help out the big shipper." A discussion took place between Mr. Green, representing the Steel Company of Canada, and the Chief Commissioner, and at p. 8515 the following comment was made by the Chief Commissioner:—

"As far as the average question is concerned, no doubt it is a good thing for the large plant, because it enables them to keep the cars without paying demurrage."

and on p. 8516, the following discussion took place:—

"Mr. GREEN: The point I was trying to make out was that the railroads admitted at that time that they got just as many cars released—in other words,

it was a 50-50 proposition.

The CHIEF COMMISSIONER: They get no more and no less, but you wouldn't have to pay demurrage, and the small man who couldn't work an average would have to."

A further comment of the ex-Chief Commissioner "average demurrage does not help the small dealer, and he in turn objects to average demurrage . . ." may be referred to.

In "re" Car Demurrage Rules XXIV, Can. Ry. Cas., 180, at p. 195.

It is not claimed by the shippers to be of general applicability.

In a letter submitted by the Canadian General Electric Company, Limited, Peterborough, the following language occurs:—

"There doubtless are several lines of business where the adoption of such a scheme would work out to the advantage of both the public and the transportation company."

Mr. Champ, in his evidence already referred to, says that the existing arrangement is "very unfair to the large shipper."

The following extract from the evidence, vol. 274, p. 4794, is pertinent in this connection:—

"The CHIEF COMMISSIONER: Mr. Dunn, how many cars a month would a man have to handle before this was of the slightest practical use to him?

"Mr. DUNN: I cannot conceive that it is of much service to the man who has not from 10 to 20 cars a month; he may gather up 10 to 20 days under the best conditions.

"The CHIEF COMMISSIONER: I only want the fact as you saw it. Your own idea is that it is not of much use to any one who does not have a business of 20 cars per month. Isn't it really a large-plant facility?

"Mr. DUNN: Well, Mr. Chairman—

"The CHIEF COMMISSIONER: But it is a large-plant facility, is it not?

"Mr. DUNN: I think so.

What has been so earnestly urged is, in reality, a plea for the large shipper. It means, in substance, that the large shipper who, because of his control of capital is able to have superior facilities, is, through a rearrangement of the demurrage rules,

to obtain therefrom a still further advantage. For example, a coal dealer who has no coal trestle may have to take the full free time allowed, and, in individual cases, may have to exceed it. The coal dealer who has a coal trestle has superior facilities for handling coal. This is something which attaches to the scope of his business and the amount of capital he is able to control; and with the equalizing of conditions in this respect it is not the function of the Board to interfere. But, if the large dealer, on account of his superior facilities, is able to unload quickly and to obtain credits therefrom, the result of the system asked for would, in all probability, be to relieve him entirely from demurrage payments, payments which the less favourably situated dealer might be subjected to; and it might be that these dealers were competitors in a common area. It would be improper for the Board to attempt to take away from the larger dealer the advantages in point of facilities which his larger volume of business justified and which his greater control of capital permits; but, in dealing with the question of demurrage rules, it would be equally improper for the Board to leave out of consideration the effect which might be exercised through this proposed system in weighting the scales against the smaller dealer.

The suggestion that since the arrangement is optional the smaller dealer does not need to use it unless he desires does not meet the question.

The further suggestion that the matter might be equalized by extending the time so as to take care of the smaller dealer, is to ask that the Board should equalize conditions by discriminating in favour of the smaller dealer. To state such a proposition is to attract attention to the fact that such a condition would not long endure before complaints were received.

In regulative policy in regard to rates, the practice on the North American continent is that the only quantities in railway carriage which it is justifiable to consider are carload quantities and less than carload quantities, and that it is not justifiable for a regulative tribunal to direct or countenance rates predicated upon the handling of trainload quantities. The car of coal to the large dealer must be treated in the same way as the car of coal to the smaller dealer.

The adoption of the system might, and probably would, enable large businesses to carry on their activities without the payment of any demurrage penalties whatever. This, however, is incidental, not fundamental. The fundamental question is, would the system bring about such an expedited releasing of cars as would by adding to the number of cars free at a given moment, facilitate the handling of traffic in general, thereby enuring to the advantage of the general shipping and receiving public?

Consider the situation that may arise during a car shortage. Box cars loaded with lumber are moved into a manufacturing plant which is operating under the average system. The cars are given, let it be assumed, the expedited unloading which it is claimed for the average system. The plant, at the same time, has been experiencing the car shortage on outbound movements. The result will be that the cars so unloaded can be held by the plant, through the instrumentality of its credits, as a store of empty cars to meet its needs. The result of this as affecting other industries on the average system which have lesser credits, and especially those operating without the average system, is readily apparent.

On careful consideration of the evidence adduced and the especial references made to practice in the United States, I am of opinion that the average system is discriminatory in principle, and that it has not been affirmatively established that it will so work out as to increase the car supply available at any given time.

January 26, 1920.

The Chief Commissioner and Commissioners Goodeve, Boyce, and Rutherford concurred, and especially on the principle of "Right."

GENERAL ORDER No. 285.

In the matter of the application of the Canadian Manufacturers' Association for an order directing the extension of the Canadian Car Demurrage Rules, so as to provide for what is known as the Average Demurrage plan.

File No. 3775.3.

TUESDAY, the 2nd day of March, A.D. 1920.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Toronto, April 25, 1911; Vancouver, May 19, 1913; Calgary, May 26, 1913; Edmonton, May 27, 1913; Regina, May 29, 1913; Winnipeg, May 30, 1913; Fort William, June 4, 1913, and Ottawa, June 16 and 17, 1913, in the presence of representatives of the Canadian Manufacturers' Association, the Canadian Retail Coal Dealers' Association, the Canadian Lumbermen's Association, the Canadian Car Service Bureau, the Montreal Lumber Association, the Montreal Grain Exchange, the Boards of Trade of Toronto, Vancouver, Calgary, Edmonton, Regina, Winnipeg and Montreal, the Canadian National Railways, the Canadian Pacific, Grand Trunk, and Grand Trunk Pacific Railway Companies, the Michigan Central and Pere Marquette Railroad Companies, Winnipeg shippers, the Great West Saddlery Company, Limited, the Winnipeg Sandstone Brick Company, Limited, D. Ackland & Sons, the Manitoba Bridge and Iron Works, the Dominion Bridge Company, the Beaver Soap Company, the Vulcan Iron Works, the J. D. Clark Billiard Company, the Winnipeg Cabinet Factory, Parker Whyte, Limited, the Alaska Bedding Company, the Canadian H. W. Johns-Manville Company, Limited, the Manitoba Linseed Oil Mills, the Martin-Senour Company, Limited, the Canada Cement Company, the Alsip Brick Tile and Lumber Company, the Canadian Carbon Company, the Winnipeg Steel Granary and Culvert Company, Limited, the Gurney Northwest Foundry Company, the Winnipeg Paint and Glass Company, the Manitoba Gypsum Company, the Perfection Concrete Company, George Gale & Sons, and the Anthes Foundry, Limited, and what was alleged; and upon reading the further written submissions filed,—

It is ordered: That the application be, and it is hereby, refused.

S. J. McLEAN,

Assistant Chief Commissioner.

Application Bell Telephone Company to attach cables to Gouin Bridge.

File 29472.

JUDGMENT.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

The necessity for the work involved having been satisfactorily established by Mr. Murphy's report, I think order should go.

I note that a legal question is involved, namely, the contention of the municipalities affected that entrance upon and use of the Gouin bridge is subject to such terms as the municipalities impose. This matter has been before the Board in other cases, and the decisions are adverse to the contention advanced.

In *City of Windsor, Ont., v. Bell Telephone Co.*, 22 *Can. Ry. Cas.*, 416, heard at Windsor, Ont., November 22, 1917, application was made by the city to have the Board fix the conditions on which the Bell Telephone Company should do business in Windsor. It was pointed out in the decision that the company had a right to operate within the limits of the city of Windsor, such rights flowing from the statutory authority granted by Parliament; and it was held that the Board was without power to make compensation for the use of the city streets a term of the order.

The same question arose on an application of the Bell Telephone Company, in 1918, to construct certain conduits in the city of London, Ont., 24 *Can. Ry. Cas.*, 102. The merits were not contested; all that was involved was the question of the power of the city to make, and enforce, compensation a term of its consent to the use of the streets of the Bell Telephone Company; and it was pointed out that the Board had no power to make compensation a term of the order; and the order issued.

In an application launched in 1917, the Bell Telephone Company was concerned with underground construction on certain streets in the city of Ottawa, and also with the carriage of wires on Cummings' bridge, across the Rideau river, 22 *Can. Ry. Cas.*, 421. The question of the right to make compensation a term was dealt with here, and the decision held at p. 425.

"The contention that any type of condition which the municipality in bargaining with a company may contend for is a condition which the Board may recognize and impose, in the absence of explicit words in the Statute, is an untenable one.

"The Board is given no power under the section to make compensation a term of the order."

In dealing with the construction across Cummings' bridge, it was held at pp. 427-428:—

"The powers of the company under the legislation of 1880 in respect of carrying 'along, across or under *inter alia* . . . any public highways . . . bridges . . . ' contemplate a situation where the wires are carried along a bridge on which there is a public right of travelling; for the rights are to be used so as not to interfere 'with the public rights of travelling on or using such highway . . . bridges.'"

It was held that there was at the point in question no public way or communication or place where there was a public right of travelling or using, save on the bridge; and the statutory right of the company to carry its wires across the bridge was, therefore, recognized.

This appears to be on all fours with what is involved as to the Gouin bridge in the present application.

Mr. Murphy's report sets out:—

"It was contended that the contractors for the erection of the bridge, Messrs. Laurin and Leach of Montreal, had given a guarantee regarding the stability of the structure, which guarantee might (?) be affected if the municipality allowed cables or anything else to be attached to the bridge. The Telephone Company would, in my opinion, cause no injury to the bridge in carrying out the work as shown in the application. But, in this connection, it should be provided that the company would have to assume all liability for damage to the bridge, by its cables or their attachment, if their application is granted."

It does not appear to be necessary to put in an especial condition in the order dealing with the matter. As already pointed out, the company has power to carry its wires over bridges. Under the legislation, bridges are in this respect in the same position as the highways of which they form a part, and, consequently, the liability

of the company at law in regard to wires, cables, attachments, etc., erected and carried along highways is a measure of its liability where said wires, cables, attachments, etc., are erected and carried along a bridge which forms a part of the highway.

February 6, 1920.

The Chief Commissioner, the Deputy Chief Commissioner, Commissioners Boyce and Rutherford, concurred.

ORDER No. 29434.

In the matter of the application of the Bell Telephone Company of Canada, herein-after called the "Applicant Company," under Section 373 of the Railway Act, 1919, for permission to exercise its powers of constructing, maintaining, and operating its lines of telephone by attaching two cables to Gouin bridge, crossing the Richelieu river, between the towns of St. Johns and Iberville, in the province of Quebec, as shown on the plan on file with the Board under file No. 29472.

THURSDAY, the 4th day of March, A.D. 1920.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

HON. W. B. NANTEL, K.C., *Deputy Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the town of Iberville and the city of St. Johns; and upon the report and recommendation of the Electrical Engineer of the Board—

It is ordered: That the applicant company be, and it is hereby, authorized to construct, maintain, and operate its lines of telephone by attaching two cables to Gouin bridge, crossing the Richelieu river, between the city of St. Johns and the town of Iberville, in the province of Quebec, as shown on the plan on file with the Board under the said file No. 29472.

S. J. McLEAN,
Assistant Chief Commissioner.

Complaint of the United Grain Growers, Limited, of Winnipeg, Man., against the freight classification on Road Graders, contending that they should be entitled to 1st class rate minimum 5,000 pounds, when shipped on flat cars.

File 19367-96.

JUDGMENT.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

I have read the report of the Chief Traffic Officer and agree in the conclusions arrived at.

It may be pointed out in terms of the submissions made by the applicants that there are eight types of graders handled by them. By reference to the catalogue number and weight of the machine, the following detail is available:—

The machines lettered G-56, G-57, and G-55 are shipped with the wheels off, K.D., with a second-class rating; and no complaint is made as to these.

The machines lettered from G-50 to G-54, inclusive, are the types which are shipped S.U., on flat cars, and which are at present subjected to the general double first-class rating for the set-up machine.

Rule 6 (a) of the Classification provides as follows:—

Unless otherwise provided for in this Classification, or subsequent amendments thereto, L.C.L. shipments too long or too bulky to be loaded in a box or stock car through the side door thereof, and which are loaded on a flat or gondola car, will be carried at actual weight and tariff (class or commodity) rate, subject to a minimum of 5,000 pounds for each car used, at first-class rate for each consignment from one shipper to one consignee; except that when the Classification provides for any article a lower minimum weight than 5,000 pounds when loaded on a flat or gondola car, such lower minimum weight will apply, instead of the minimum of 5,000 pounds referred to, for each car used.

It will appear, then, that the machines G-50 to G-54 are, under this rule, carried at a double first-class rating, subject to a minimum of 5,000 pounds at first-class.

Applying the weight of 5,000 pounds to a machine weighing less than that amount works out, for example, that where the machine G-53, weighing 3,250 pounds, is charged as if it weighed 5,000 pounds, it is being charged, if the minimum weight and rate applies because in excess of the tariff rate on the actual weight, 1.54 times as much as the weight which would apply if there were not such a minimum weighting. Working this out for the machines concerned which weigh less than 5,000 pounds, the result is as follows:—

WEIGHT.

G—53, 3,250 pounds	increased	1.54 times.
G—54, 3,350 "	"	1.49 "
G—52, 3,788 "	"	1.32 "
G—51, 4,770 "	"	1.05 "
		<hr/>
Average		1.35

There is no classification rating between first-class and one and one-half times first-class.

There is given up to the carriage of the grader the complete service rendered by a flat car. It is justifiable to take into consideration in connection with the earnings on the large grader weighing 5,510 pounds, the use of which might be made of the same car in a carload movement. For this purpose, the earnings in the same mileage movement of a flat car 36 feet or over in length and carrying lumber with a minimum of 50,000 pounds may be taken. This type of car is taken as characteristic. In the case of the Canadian Pacific, 86.4 per cent of its flat cars are over 35 feet 2 inches in length.

The following table compares the earnings on the first-class rating for the same grader with the earnings on the minimum for lumber for 100, 150, 200, 250 and 300 approximate miles:—

	Miles.	First-class Cents.	Charge on grader.	Flat car of lumber with 50,000 pounds. Minimum.
Edmonton to Red Deer	100	50	\$27 55	\$62 50
" Carstairs	153	64	35 26	72 50
" Hayter	199	74	40 77	87 50
" Adanac	254	82.5	45 46	95 00
" Oban	300	91.5	50 42	107 50

On this basis for the total mileages concerned, the earnings per car-mile in the case of the grader would be, at the first-class rate, 19.8 cents as compared with 42.2

cents on the carload movement of lumber. That is to say, the earnings per car-mile on the grader are 47 per cent of the earnings per car-mile on the lumber. If the movement is computed on $1\frac{1}{2}$ times first-class, the respective car-mile earnings are 29.7 and 42.2, and the percentage is 70.4 per cent.

Considering the rating on the minimum and the effect of this, together with the general classification factors adduced in the Chief Traffic Officer's report, I do not feel that the Board would be justified in directing a reduction below the rating of one and one-half times first-class.

February 25, 1920.

The Chief Commissioner and Commissioner Rutherford concurred.

CLASSIFICATION OF ROAD GRADERS.

Application of the United Grain Growers, Ltd., Winnipeg.

File 19367.96.

REPORT OF CHIEF TRAFFIC OFFICER.

The United Grain Growers ship eight types of road graders, apparently the non-elevating kind. The three lighter types, weighing from 1,247 to 2,660 pounds each, are shipped in the knocked-down state in box cars and take 2nd class rates, against which no complaint is made.

In box cars the set-up machines are classified D-1st class, no distinction being made between the elevating and non-elevating types.

If it will dispose of the application, the railways, through Mr. Ransom, offer to substitute now the rating of $1\frac{1}{2}$ first class shown in the revised Canadian Freight Classification, on the compilation of which they have been engaged for some time, and which, when completed, they intend to submit for the Board's approval. Applicants, however, hold out for first class.

Applicants ship their five heavier types on flat cars because, apparently, they are too large for box car loading. The weights of these run from 3,250 to 5,510 pounds, and the latter weight is to be increased in a new machine to 6,400.

Rule 6 of the Canadian Classification provides that any article too long or too bulky to be loaded in a box or stock car through the side door, and which is consequently loaded on an open car, is carried at actual weight at the same rate per 100 pounds as if loaded in a closed car, but subject to a reserved minimum equivalent to 5,000 pounds at first class; the principle being that the total charge shall be sufficient to ensure a fair earning for a car that in most cases is monopolized by a particular shipper. The principle is universal in North America and has been endorsed by the Interstate Commerce Commission, although the reserved minimum is 4,000 pounds in the States. Applicants do not object to the 5,000 pounds minimum; they want the first-class rate on the entire weight, subject to this minimum.

Since a different rating for different classes of car would not harmonize with classification construction, and the box car being the standard car for merchandise traffic, the class in which each article is placed is predicated on box car loading, and one of the elements of classification is bulk compared with weight. In the set-up state there can be no doubt that these graders take up considerable space and are not adapted to economical stowage. This is shown by the illustration in the catalogues, and although the submissions give no measurements, the catalogues show one of the machines which are shipped in box cars (the "King Junior") to be $10\frac{1}{2}$ feet long between axles and 4 feet 3 inches wheel tread, with a 7-foot blade.

The C.M.A. Trade Index shows road graders to be made in Canada at Preston and Exeter, Ontario, and applicants are not the only dealers. The machines they refer to come from Indianapolis. If instead of importing in carloads, they brought in L.C.L. lots, they would pay from Indianapolis to St. Paul 1½ 1st, or the same rating that is now offered as a substitute for D-1st in the Canadian Classification.

The application is based entirely on analogy, comparisons being made with the classification of some other articles that come under rule 6 when loaded on open cars, and which are classified first.

The first comparison is with manure spreaders, an article shipped by applicants themselves and particularly emphasized. The classification is first set-up, second k.d. If set-up an open car would have to be used; but as applicant's catalogue announces that the machine takes second-class rates, it is clear that they are shipped k.d., so that the comparison can hardly be considered a practical one.

As regards the Ditcher; Mr. Ransom contends that what is so named in the present classification at first class is intended to be the comparatively small machine, pointed somewhat like a sidewalk snow plough, for dredging out trenches for drain tile, drawn by two or four horses according to soil, and which is usually shipped in box cars; while applicants' comparison is with what in their catalogue appears as "G. 50, Reclamation Ditcher," but which, in the application, is described as "G. 50, Road Grader," the largest and heaviest in the list, worked by engine power or twelve horses. Only the smallest grader is operated with two horses according to the catalogue. The railways propose to make the distinction clear in the proposed new classification.

If the other articles enumerated by applicants are made capable of box car loading the rating of each is first class, excepting automobiles which are D-1st, while graders, k.d., are second class; so that to carry analogy into practice the graders would have to be increased to first class—a change that might not be welcomed by other dealers or manufacturers of the lighter machines. By way of compensation the first class would reduce the charge only on the three largest graders (G. 50, 51 and 52).

On the submissions and catalogues I recommend approval of the adjustment proposed by the railway companies, which connotes a reduction of 25 per cent.

Respectfully submitted.

J. HARDWELL,
Chief Traffic Officer.

Application of the Freight Adjusting Bureau, Vancouver, B.C., for a ruling that shoddy blankets are entitled to the rate provided for specified articles of dry goods in item 250, Canadian Freight Association's Commodity Tariff, No. 1-A, C.R.C. No. 14.

File 19367.95

JUDGMENT.

Mr. McLEAN, ASSISTANT CHIEF COMMISSIONER:

What is involved is the interpretation of apparently contradictory provisions of a tariff.

It is quite clear that item 250 of the tariff (C.R.C. 14) must be read in connection with item 265. The latter, among other things, has "Blankets, other than cotton or shoddy." Reference must therefore be found elsewhere to the shoddy article, and the only other item in the commodity tariff covering blankets is No. 250, which contains "Blankets, cotton, or shoddy." While it is true that this last is headed "Articles made wholly of cotton," provision has to be made for the shoddy blanket excluded from item 265, hence the words "cotton, or shoddy." But for the specific exception in item 265 these words would have been redundant, having regard to the word

"wholly" in the headline, but being there they must have been inserted with intent, meaning "cotton, as above (wholly) also shoddy." Another interpretation would take shoddy blankets entirely out of the commodity list, as contended by applicants, in which case the 1st class rate would apply, namely, \$4.70½ or \$1.25½ per 100 pounds, more for the inferior article than for the pure wool blanket of item 265 at \$3.45, and thus create an anomaly that respondents themselves could not be expected to defend.

I consider that applicants have proved title to the \$2.65 rate of item 250, and they have been supported, as the evidence shows, by the C.P.R. Claims Department.

(Signed) S. J. McLEAN,

February 27, 1920.

The Chief Commissioner and Commissioner Rutherford concurred.

Re Checking Non-Handled Freight—Complaint of T. H. Taylor Company, Chatham.

File 16453.4.

JUDGMENT.

MR. COMMISSIONER BOYCE.

The complaint involves the rights, as between shipper and carrier, as regards checking of a shipment of flour from Chatham, Ont., to Sydney, N.S., loaded by shippers, upon their private siding, at Chatham, Ont., and sealed with their own seals. On arrival the carriers alleged that the seals were intact and declined to check the contents of the car, or to assume any responsibility for the alleged shortage in its contents.

The relative rights of shipper and carrier, where shipments are made from private sidings of the shipper, are discussed and fully set out in the judgment of the Board, in *re Bole Grain Company and C.P.R.* (see Judgments, Orders, etc., volume 8, page 365), the principle of which is applicable to the complainants' case, and would appear to be a bar to the recognition of their claim. As was laid down in the *Bole Grain Company's Case*, the carriers, in the case of shipments from private sidings, are not subjected to the same liabilities as are involved where shipments are made in the ordinary course of business, from the terminus of the railway where the carrier receives, receipts for, and loads the shipment, and seals the car. *A fortiori*, where, as in this case, from their private siding, the complainants themselves load a car, presumably checking the contents into the car, and seal that car with their own seals (not with the seals of the railway company), and at destination the seals are found intact, so it cannot be alleged that the seals were tampered with while in the care of the carrier, there is no duty cast upon the railway company to check the contents of the car, from the car, nor any liability for non-delivery of any portion of its contents.

Beyond this principle, as laid down in the case cited, rule 12 of the Canadian Freight Classification applies. That rule reads as follows:—

"Freight weighing 2,000 pounds or over, per piece, or package; also all freight in 6th, 7th, 8th, 9th, and 10th classes, must be loaded and unloaded by owners."

Flour is in the 8th class, and as such, the shipment mentioned was subject to the rule cited.

The carrier not having loaded the car, nor superintended the loading of the car, and not having, in any way concerned themselves with, or voluntarily assumed responsibility for the contents of the car, clearly assumes no duty to check out, or become responsible for the contents of the car. It is a case where the railway company

would have had a right, following the Bole Case cited above, to have noted the bill of lading, "Shippers load and count."

With the above observations, the claimants will see that their claim cannot be supported.

OTTAWA, February 27, 1920.

The Chief Commissioner concurred.

THE ASSISTANT CHIEF COMMISSIONER:

I agree. Reference may also be made to the agreement worked out in 1916 between representatives of the shippers and of the railways as to carload loading on private sidings. One effect of this is when the car is not loaded by employees of the railway, or under its supervision, there is no duty imposed on the railway to check out such freight.

ORDER No. 29424.

In the matter of the application of the T. H. Taylor Company, Limited, complaining that a carload of flour loaded and sealed by the applicant company at Chat-ham, Ontario, out-turned a shortage at Sydney, Nova Scotia, and that its claim therefor has been refused by the carrier on the ground that the car reached its destination with the applicant company's seals intact; and applying for a ruling that the checking out of the lading was an obligation on the carrier.

File No. 16453.4.

WEDNESDAY, the 3rd day of March, A.D. 1920.

HON. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is alleged in support thereof and on behalf of the Canadian Manufacturers' Association,—

It is ordered: That the complaint be, and it is hereby, dismissed.

F. B. CARVELL,
Chief Commissioner.

Application of the Canadian Freight Association, on behalf of the railway companies in Canada subject to the jurisdiction of the Board, for an order rescinding General Order No. 173, dated the 26th October, 1916, and authorizing the said railway companies to publish and file charges for the use of heated refrigerator cars on the basis of 1½ cents per mile, with a minimum of \$2, in addition to the regular freight charges.

File No. 18855.11.

JUDGMENT.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

I.

Application is launched by the Canadian Freight Association, acting on behalf of the Canadian railways, for an increase in the rates for the use of heated refrigerator cars for movements in carlots.

II.

The application as launched by the secretary-treasurer of the Canadian Freight Association, Western Lines, acting on behalf of the lines from Fort William west, is for authority to increase the rate per car-mile to 1½ cents, minimum \$2. Reference is made in this connection to Order No. 25251 of August 3, 1916, and to General Order No. 173 of October 26, 1916. The situation is that the original tariffs filed for the west, and which were suspended by Order No. 24994, had this suspension lifted by Order No. 25251. The request on behalf of the lines in Western Canada is for an increase to 1½ cents per car per mile, with the existing minimum of \$2.

The matter of rates for heated car service in carlots in Western Canada was dealt with in 1916. Tariffs providing for the rates as set out in General Order, as above referred to, had been filed and, on complaint, had been suspended. Thereafter hearings were held in the West, the matter being set down for hearing at Winnipeg, Saskatoon, Edmonton, Calgary, Moosejaw, and Regina. As a result of the discussions which took place, the representatives of the shippers consented to the charge of 1 cent per car per mile, with a minimum of \$2. Certain readjustments in certain of the tariff rules were made dealing with less than carlot shipments. These are not material in the present discussion.

The result of Order No. 25251, referred to in the preceding paragraph, is that the rates in question went in under ordinary tariff filing and not under direction by order fixing a basis. The matter was not covered by General Order No. 173.

The present application has been heard at Fort William, Winnipeg, Regina, Saskatoon, Edmonton, Calgary, Vancouver, and Victoria. In support of the application for an increased rate, a statement setting out the following particulars was filed at Vancouver by the Canadian Pacific Railway Company:—

COST OF HEATED CAR SERVICE BASED ON FIGURES FOR 1918-1919.

1. Total cars handled..	4,514	
2. Total mileage..	3,947,944	
3. Total average per car..	874.6	
4. Capital cost of 4,400 heaters at \$20..	\$88,000 00	
5. Interest at 6 per cent..	5,280 00	
6. Interest per car mile..		0.14
7. Depreciation—		
Renewals based on average life of ten years per heater..	\$ 8,800 00	
8. Cost of repairs..	10,384 00	
		\$19,184 00

9. Depreciation and repairs per mile.		0.48
10. Terminal attendance—		
Fifty inspectors at 48c. per hour—		
Six months on heaters.	\$28,800 00	
Per mile.		0.73
11. Office supervision and distribution of heaters, figures		
on salaries paid general office staff.	\$1,762 50	0.05
12. Cost of heater fuel per mile—		
Two bushels for 36 hours, fifteen miles per hour.		
Charcoal costs 36c. per bushel.		0.17
13. Cost of handling at 3c. per ton per mile, average		
weight, 75 pounds per heater.		0.05
Total cost per mile.		1.62

This was a matter of criticism by the different parties interested and of explanation by the railway.

The Canadian Northern Railway Company filed a statement dealing with the cost of particular items entering into the heater service. As will be noted from the subjoined statement, this gives a percentage increase average of 82 per cent for the labour and material costs concerned.

"The cost of material and labour pertaining to the above service, 1916, as compared with 1919 is as follows:—

	1916.	1919.	Advance.
Oil.gal.	\$ 0 10	\$ 0 18½	85%
Wick.doz.	1 50	2 50	67%
Heater.each.	11 00	11 70	67%
Labour (superintendence).per hr.	0 24	0 44	83%
" (repairs)."	0 37	0 68	84%
" (helper)."	0 22	0 45	105%

"These figures show an average advance of 82 per cent, which is as close to actual figures as we have been able to get, after consulting our Local Freight Agents, Mechanical Department, etc."

A general protest against the proposed increase was lodged by the Board of Trade of Weyburn, Sask. The Board of Trade of Regina, while not objecting to the increase proposed, raised some questions as bearing on the less than carlot movements. These matters were gone into, explanation being given that no increases on the service in question were involved in connection with the present application. The Lethbridge Board of Trade submitted a statement saying that its general position was to submit the matter to the decision of the Board. No objections were lodged at Vancouver, Victoria, Edmonton, or Fort William.

The Board of Trade of Calgary submitted a written statement, the essential points of which were:—

(1) The figures as presented in the Canadian Pacific return do not set out accurately the cost of operating heaters on the through service. The essential criticism here is that the total of some 4,400 heaters required to take care of movements totalling 4,514 cars is excessive, and that there must be, to give such a total, an inclusion of the heaters used on less than carlot movements.

(2) It is contended that the charge for the total wages of fifty inspectors for six months against the through heated car service is improper.

(3) It is alleged that the charge for interest on heaters on a per-mile basis is incorrect. It may be noted that a check of the computation gives a corrected figure of 0.135 cent as against 0.14 cent. It is stated that the costs of operating the service include interest on investment, depreciation, and all other charges, and, therefore, the existing rate is not justified; and it is contended that instead of there being an increase the existing rate should be reduced to one-half cent per car-mile.

The capital cost of the heater is set out in the Canadian Pacific statement as being \$20. Exception was not taken to this. At the same time, the Canadian Northern gives a figure of \$17.70. The Canadian Pacific for Eastern Canada gives a replace-

ment cost of \$18.50. The computation as to fuel expenditure is based on an average speed of 15 miles per hour. In Eastern Canada, a revised figure of 10 miles per hour was given. This appears to be more characteristic.

The points raised by the Calgary and Winnipeg Boards of Trade were gone into at Winnipeg. It was there admitted that the criticisms that the car mileage as given included less than carlot mileage was correct and that a deduction of 13 per cent should be made on this account. By deducting 13 per cent, the Canadian Pacific gave, subject to the consideration of certain additional factors later referred to, a revised car-mile cost of 1.41 cents.

Leaving aside the supplementary factors of cost which the Canadian Pacific claimed and which are set out below, the figure of 1.41 cents would, by itself, show an apparent profit of 0.09 cent per car-mile. This would afford on the average car journey a slight profit amounting to 78.7 cents.

The method pursued in arriving at the corrected result of 1.41 cents is, however, based on a fallacy. It assumes that a 13 per cent reduction in the divisor of car mileage means 13 per cent in the quotient. But this reduction in the car mileage following from the same reduction in the number of cars included in the service means that the capital cost and the interest and depreciation charges based thereon are reduced by the same percentage. Consequently, the divisor and dividend having been reduced by the same percentage, it follows that, except in so far as there are fractional differences from the division not being extended, the quotient will be the same as before.

Further, it leaves out of consideration that there are three sets of divisors involved: (1) total car mileage, the divisor for items 6, 9, 10, and 11; (2) mileage per individual car per day for item 12; (3) ton mileage in the case of item 13. The deduction of 13 per cent is not made in the last two cases.

The position set out in the two preceding paragraphs is evidenced if the Canadian Pacific statement as given, subject to a correction to a basis of 10 miles per hour and the appropriate percentage reductions for less than carlot mileage and cars in less than carlot service, is taken. The following results are available:—

1. Cars handled in car lot movements.	3,927
2. Mileage of cars handled in C.L.	3,434,711
3. Average mileage per car.	874.6
4. Capital cost. \$	78,540 00
5. Interest. \$	4,712 00
6. " per car mile. cts.	0 13
7. Depreciation. \$	7,854 00
8. " per car mile. cts.	0 22
9. Repairs. \$	9,031 08
10. " per car mile. cts.	0 26
11. Terminal attendance. \$	25,056 00
12. " " per car mile. cts.	0 72
13. Office supervision. \$	1,533 37
14. " " per car mile. cts.	0 04
15. Cost of fuel per car mile. "	0 20
16. " " handling per car mile. "	0 05
Cost per car mile. cts.	1.62

Items 1, 2, 4, 7, 9, 11, and 13, as given above, are obtained by deducting 13 per cent from corresponding figures in the Canadian Pacific statement.

The figure in the Canadian Pacific statement of 0.17 cent per car-mile for fuel cost at a movement of 15 miles per hour is in error and should be 0.13 cent.

If instead of a speed of 10 miles per hour a speed of 15 miles, as in the original statement, is taken, this would mean a deduction of 0.06 cent and a reduced cost figure of 1.55 cents per car-mile.

If for the sake of still more conservative computation the Canadian Northern figure of \$17.70 for a heater is taken, the movement being computed on an average speed of 10 miles per hour, the following summary statement of cost item is available:—

	Cents.
6. Interest per car mile..	0 12
8. Depreciation per car mile..	0 20
10. Repairs per car mile..	0 26
12. Terminal attendance per car mile..	0 72
14. Office supervision per car mile..	0 04
15. Cost of fuel per car mile..	0 20
16. Cost of handling per car mile..	0 05
Cost per car mile..	1 59

A speed of 15 miles per hour would give a corrected cost figure of 1.52 cents.

If the replacement figure of \$18.50, as used in the east, is taken, the cost per car-mile on a ten-mile speed is 1.60 cents, while on a fifteen-mile speed it is 1.53 cents per car-mile.

The railway submitted that in addition to the items it had dealt with in the statement, it had not included the following which were entitled to have weight and which would very considerably add to the cost of the service:—

“We have not, in compiling the figures covering the cost of heater car service, included the following headings:—

“1. The cost in connection with maintaining heater rooms at the larger terminals, which rooms are used for the storage of heaters and charcoal and pie plates used in starting the heaters and the saltpetre for the dipping of pie plates. Nor have we included the labour employed in these rooms in looking after the items referred to. The pie plates and saltpetre alone are two very expensive items in the course of a season, which are absolutely necessary in connection with the use of charcoal heaters.

“2. We have not included the cost of draying and collecting heaters. For instance, heaters in cars consigned to individual companies, such as the Scott Fruit Company, have to be gathered up and drayed to the freight shed after cars are unloaded. Likewise, if Matthews-Blackwell or some other shipper desire to make shipment in heated cars we have to send heaters to their warehouse to be placed in cars. The average cost of draying these heaters amounts to approximately 40 cents per heater. The same expense applies to all large terminals, such as Moosejaw, Calgary, Lethbridge, Vancouver, etc., and is a heavy expense in the course of a season.

“3. We have not included in the expense the cost of picking up heaters at various points in the West, segregating them at the larger terminals and distributing them to various points in the West. As an illustration, on several occasions this season on account of the large number of heaters that have been used in the Okanagan Valley, we have been compelled to pick up heaters at various points and segregate them at the larger centres, such as Winnipeg, Moosejaw, Calgary, and load them in baggage cars and forward them to the Okanagan by passenger train, which has on at least two occasions involved the running of an extra section of passenger train. Likewise there is a large expense attached to the gathering of heaters in this manner and distributing them at all points.

“4. We have not included in the expense the cost of heater car messengers. Messengers are sent on all trains handling five or more cars of perishable freight when weather conditions make it necessary. These messengers are paid on an hourly rate, continuous time, being paid time and a half after being on duty ten hours and double time for Sundays and holidays. As an illustration, a messenger accompanying five or more cars of perishable freight

from Calgary to Moosejaw results in an expense of \$36. Similar service from Calgary to Wetaskiwin costs \$24. These figures are based on the actual cost as paid to messengers during the past few weeks.

"5. We have not made any allowance for the extra time required in terminals for attention to heaters in cars of perishable freight. As an illustration, take for instance a train containing from five to fifteen cars of perishable freight. It is necessary to hold this train up in terminals for one to three hours longer than is necessary to hold a dead train in order to allow sufficient time for attention to be given to the heaters, fire pots cleaned, and charcoal supply replenished. In the larger centres heated cars are switched out of trains and moved to platform where the heaters can be given the necessary and proper attention. No allowance at all has been made in connection with expense of switching these cars to and from trains.

"6. There are certain expenses in connection with the handling of charcoal which we have not included in the figures submitted."

"7. There are certain general overhead expenses of a supervisory nature which are not included in the figures submitted."

There was also raised by the Winnipeg Board of Trade the point that the terminal attendance of fifty inspectors, as shown, had not been affirmatively established to be an exclusive service given to the heated refrigerator cars. In the hearing in connection with the eastern portion of the application, it was stated by the Canadian Pacific that the time of the inspectors was exclusively devoted to the heater service, and therefore, that the charge in total was a proper one. Mr Denison's position, in substance, was:—

"Mr. DENISON: We had due notice of this, Mr. Chairman, and spent some time yesterday with the railway men in conference so that we might understand just what they were wanting and the necessity for it. My opinion is that there is nothing extraordinary or unreasonable being adopted. If the cost of one cent, as adopted in 1916, was fair and reasonable, there is no question but what one and a half cents at the present time would be also fair enough; but we went into the figures which the railway people have available and I am perfectly satisfied with the cost of one and a half. So far as the shippers of the Winnipeg Board of Trade are concerned, we have no protest to make."

Due weight was given by Mr. Denison to the statement of the railway filed at the hearing, and in a supplementary communication of December 9 he said that the statements of cost were more or less reasonable, and that if the Board was satisfied, after giving due consideration to his submission, he had no further objection. He made the proviso that the service should be all that weather conditions would permit. This is a general obligation of the railway independent of the particular question of rates concerned.

At the sitting in Vancouver, the British Columbia Traffic and Credit Association of Vernon, B.C., hereinafter called the Traffic Association, which was interested in fruit shipments, had its attention drawn to the matter involved through questions directed to its secretary-manager, Mr. Winslow, who was present at the hearing. Subsequent to this sitting, a telegram was received from him asking for particulars and reasonable time for examination and preparation in rebuttal; and it was at the same time suggested that the matter might stand pending judgment by the Interstate Commerce Commission in connection with the investigation into the general question of heater rates and service it was then conducting. This was argued for on the ground that the American service covered a traffic directly competitive with that of the applicant. If, however, it was not obligatory to take into consideration the competitive situation, then the Traffic Association was agreeable to leave the matter of examination of cost in the hands of the Board, subject to the suggestion that the charges should be such as to warrant an entirely efficient service.

As already pointed out, the matter had been brought to the attention of the Traffic Association. After the receipt of the telegram above set out, a further direction was given to the railway to furnish copy of the application and statements in support of it to the Traffic Association; and direction was given that the said association should file its objections, if any, within three weeks after receipt.

From communications on file, the railway obeyed this direction under date of December 4. Under date of December 12, the said Traffic Association wrote as follows:—

"While we favour the general proposition that the carriers should receive a fair remuneration for service rendered, we respectfully submit that in the framing of any particular tariff of rates there must be considered also the efficiency and reliability of the service rendered and the competitive rates and service. In these respects our traffic is under certain disabilities both as regards the performing of heater service and in respect to competitive traffic. For some time past, it has been our intention to meet the traffic officials of the Western lines with a view to amelioration of these disabilities. We now hope that in conjunction with the fruit jobbers of Western Canada to meet the traffic officials in January or February, which would permit of a hearing before the Commission, if this is required, in the spring.

"We regret we are unable at the present time to proceed as we desire, as the data for the current season are not available and will take some time for preparation. We would accordingly respectfully request that action by the Commission on the carriers' present application be in the nature of a necessary temporary relief; such action to be *without prejudice* to a reopening of the case along the lines we above suggest."

In referring to the above letter which was addressed to the Chief Commissioner, the Traffic Association, in a letter of same date to the secretary of the Board, stated its position to be that it had asked the Commission to deal with the carriers' application temporarily affording them what relief was considered necessary, but leaving the matter open, without prejudice, to be dealt with later should the said Traffic Association not be able to come to a satisfactory arrangement with the traffic officials direct; and in another communication, dated December 13, addressed to the Board, said Traffic Association desired its telegram of November 26, already referred to, to be withdrawn.

Under date of February 10, the Traffic Association wrote enclosing resolution setting out its position, as follows:—

"That the association bring to the attention of the Canadian Board of Railway Commissioners our strong objection to any increase in heating charges unless coupled with it there is carriers' liability. Carried."

What is involved in this is the contention that the carrier should be a full insurer; in other words, that as a condition of the increase of rate for heater service, the carrier should accept an extended liability which it does not at present.

III.

General Order No. 173 did two things. In the first place, as to local movements east of Westfort it lifted the suspension which had been imposed by Order 24680, and by so doing permitted the charge of 1 cent per car-mile, minimum \$2, to become effective. In the second place, it dealt with the question of group rates on the movement East to West, and vice versa, and prescribed the basis therefor. The application as launched under date of November 28, 1919, on behalf of lines in Eastern Canada, asking for the amendment of General Order No. 173 by permitting the adoption of a basis of $1\frac{1}{2}$ cents per car-mile, minimum \$2, is in effect, first, an application for the

amendment of the portion of the order dealing with the movement from the East to the West, and vice versa; and, second, an application to file new tariffs for the movement east of Westfort in substitution for the tariffs allowed to become operative in 1916.

In support of the application, the Canadian Pacific submitted the following statement:—

COST OF HEATED CAR SERVICE.		
1. Total cars handled.. . . .	7,048	
2. Total mileage.. . . .	4,052,600	
3. Average mileage per car.. . . .	575	
4. Capital cost of 3,400 heaters.. . . .	\$63,000 00	
5. Interest at 6 per cent.. . . .	3,780 00	
6. Interest per car mile.. . . .		0.09
7. Depreciation—		
Renewals based on average life of ten years per heater.. . . .	\$ 6,300 00	
8. Cost of repairs.. . . .	8,040 00	
	<hr/>	
	\$14,340 00	
9. Depreciation and repairs per car mile.. . . .		0.35
10. Terminal attendance—		
44 inspectors at 49 cents per hour (amended).. . .	\$31,046 00	0.77
43 inspectors at 40 cents per hour.		
8 hours per day.		
30 days per month.		
6 months on heaters (original).. . . .	24,768 00	
11. Terminal attendance per car mile.. . . .		0.61
12. Office supervision and distribution of heaters based on salaries paid general office staff.. . . .	\$1,830 00	
Per mile.. . . .		0.04
13. Cost of fuel per mile—		
6 gallons for 24 hours.		
10 miles per hour (amended).. . . .		0.48
15 miles per hour.		
Oil costs 19 cents per gallon.		
Per mile (original).. . . .		0.32
14. Cost of handling heaters at $\frac{3}{4}$ cents per ton per mile, average weight, 75 pounds per heater, two heaters per car.. . . .		0.06
Total cost per mile (original).. . . .		1.47
19,740 wicks used at 20 $\frac{3}{4}$ cents each, \$4,096; cost per mile (additional).. . . .		0.10
Amended cost per mile (amended).. . . .		1.89
(The word "original" in above statement refers to statement of 1.47 as originally filed. The word "amended" points out the particulars in the schedule giving total of 1.89.)		

The Grand Trunk also furnished the following detailed statement:—

COST OF HEATED CAR SERVICE BASED ON HEATED CARS MOVING FROM
NOVEMBER 1, 1918, TO MARCH 31, 1919.

Total cars handled.. . . .	1,224	
" mileage.. . . .	245,148	
Average mileage per car.. . . .	200	
Capital cost of 500 heaters.. . . .	\$7,500 00	
Interest at 6 per cent.. . . .		450 00
Interest per car mile.. . . .		0.18
Depreciation—		
Renewals based on average life of ten years per heater.	\$ 750 00	
Cost of repairs.. . . .	1,170 10	
	<hr/>	
	\$1,920 10	
Depreciation and repairs per car mile.. . . .		0.73
Cost of attendance—		
One hour applying heaters.. . . .	\$ 575 28	
Half hour inspecting heaters allowing for one inspection on route on each car, at 47 cents per hour.. . .	287 64	
Half hour removing and taking cars of heaters after protecting car.. . . .	287 64	
	<hr/>	
	\$1,150 56	

COST OF HEATED CAR SERVICE, ETC.—*Continued.*

Cost of attention per car mile.	0.46
Office supervision—	
Figured on wages paid office staff.	\$600 00
Cost per car mile.	0.24
Cost of fuel—	
6 gallons for 24 hours.	
15 miles per hour.	
Oil costs 20 cents per gallon.	
Cost of fuel per car mile.	0.33
Total cost per car mile.	1.99

GRAND TRUNK RAILWAY SYSTEM—COST OF HANDLING HEATERS.

	Season, 1915-16.	Season, 1918-19.	Increase.
Oil.per gal.	\$ 0 11	\$ 0 20	82%
Wicks.per doz.	0 76	1 56	105%
Heaters.each.	11 00	18 00	63%
Repairs.per heater.	1 23	2 05	66%
Wages paid inspectors, etc., attending heaters.per hr.	0 20	0 47	135%
Clerical help, S.C.S. office.per month.	60 00	100 00	60%

REMARKS.

<i>Price of Oil Heaters.</i>	<i>Season 1918-19.</i>
\$ 8.75, years 1912, 1913, 1914, spring 1915.	Oil—based on coal oil 16½ cents per gallon, and mineral oil at 23 cents per gallon.
10.50 fall of 1915.	Repairs—based on heaters repaired between November 1, 1918, and March 31, 1919.
12.00 spring of 1916.	
15.00 fall of 1916.	
16.50 spring of 1919.	
18.00 1919 with latest improvements.	
Repairs for 1915-16, based on 575 heaters repaired at London, between January and December, 1916.	

The original cost statement as submitted by Canadian Pacific showed a cost of 1.47 cents per car-mile. It will be noted that the statement which is given above shows a total of 1.89 cents. The increases are due to the following factors:—

(a) *Terminal inspectors.*—The first statement showed forty-three inspectors at 40 cents an hour; the second statement shows at present employed forty-four inspectors at the higher wage of 49 cents per hour. This factor makes an increase of 0.16 of 1 cent per car-mile.

(b) *The cost of fuel.*—In the first statement, the computation is on the basis of 15 miles per hour. It is set out by counsel for the railway that this average speed is excessive and that the computation should be made on the basis of 10 miles per hour. This, with the same consumption of fuel during a 24-hour period and at the same price, gives an increase of 0.16 per car-mile.

(c) *The cost of wicks used.*—As set out in the evidence, when the statement was prepared there were no details available as to the cost of wicks. As shown in the statement above, these figure out 0.10 of 1 cent per car-mile.

It will be seen that the items above referred to give a total of 0.36 of 1 cent per car-mile. If the difference due to the calculations as to rate of transit per hour is eliminated this will still leave 0.26, or a total charge of 1.73.

It is contended that there are items of cost in connection with the service which cannot be reduced to dollars and cents. One important one is the service performed in distributing heaters. There are central holding points for heaters at inspection points. At a large terminal like Montreal or Toronto these heaters may have to be sent out to some private siding for heating a car that has been loaded outwards. In some cases the heaters have to be distributed by team. Where there is a line haul

involved, if the forwarding of the heater to the point concerned is not one involving emergency, the movement is by freight. In cases of emergency they are moved by passenger trains. Reference was made to a carload of heaters moved by passenger train to St. John on January 6, part for local use and part for distribution.

In connection with the distribution of heaters, it is contended it is necessary to make use of other employees in distribution at terminal points. A building is maintained at Montreal for storage for eastern lines of these heaters during the summer months. This building is said to have a rental value of \$2,400 per year.

While the hearing at Ottawa was widely circularized by notification to trade bodies, there was but little protest. A telegram was received from the Quebec Board of Trade, but as received it referred to an increase of $1\frac{1}{2}$ cent and a protest against this. Obviously the Board of Trade was proceeding on erroneous information, as the increase involved was one-half cent. It may be that there was an error in transmission of telegram; but no information bearing on this was filed and nothing further developed from the Board of Trade in question.

Mr. Marshall, for the Toronto Board of Trade, drew attention to some of the provisions of the cost statements, particularly as to the question of terminal costs, and to the number of inspectors necessary. The criticism turned more particularly on the statement of facts which had been made in connection with the 1916 investigation, wherein it was set out by a witness for the Canadian Pacific that a man engaged in this service could occasionally be used in other services of the railway. Counsel for the railway affirmatively stated that on the changed conditions and the practical doubling of mileage under heat at present as compared with 1916, the full time of the men in question was taken up with the heater service; and Mr. Marshall said he accepted this statement.

The general position as submitted by Mr. Marshall was:—

“In so far as the members of the Toronto Board of Trade are concerned, there is no objection whatever to the tariffs of the carriers being increased from one cent per mile, minimum \$2, to $1\frac{1}{2}$ cent per mile for heated car service, providing of course we get a really good service, and that the Board find after examining the statements submitted by the carriers that their costs are approximately right.”

Mr. Tilston, for the Montreal Board of Trade, interposed no objection.

The position taken by the Traffic Association, as already referred to, is tied up to the position as taken by Mr. McIntosh, of the Fruit Commissioner's office, who appeared on behalf of the following:—

- The Ontario Fruit Growers' Association.
- The Nova Scotia Fruit Growers' Association.
- The British Columbia Credit and Traffic Association.
- The Nova Scotia Shipping Association.
- The Western Canada Fruit Jobbers' Association.
- The Ontario Vegetable Growers' Association.
- The Niagara Peninsula Fruit Growers' Association.
- The Quebec Department of Agriculture.

Included in this list is the Traffic Association and Mr. McIntosh read into the record a telegram from Mr. Winslow, the secretary-manager of the Association, dated December 30, as follows:—

“Suggest to this Board that the traffic officials of western lines have been invited to meet fruit growers, shippers and jobbers of Western Canada in conference at Vancouver the last week in January for discussion of heated service with a view of more practical arrangements.”

The subsequent statement by the Traffic Association has already been set out.

Mr. McIntosh desired that opportunity be afforded for further written submissions on behalf of the director of the Co-operation and Markets Branch, Ontario Department of Agriculture; Mr. A. H. McLennan, Vegetable Specialist, and the Potato Council of Ontario. The time which has elapsed has been amply sufficient for the filing of such submissions. None have been received. He also stated a request on behalf of the Fruit and Vegetable Trade of Montreal that a hearing be held in that city, or that they be permitted to file written submissions. The same comment as above may be applied here.

There has just been received the following resolution, passed at the annual convention of the Ontario Vegetable Growers' Association, this resolution being submitted under date of February 25:—

“Moved by J. J. Davis, seconded by Henry Broughton, that whereas the present heated refrigerator-car service as now provided by the Canadian railways has not been satisfactory in the handling of different varieties of vegetables, particularly onions and potatoes, causing heavy losses and waste of foodstuffs, due to the fact that heaters have not received proper attention in transit, the Ontario Vegetable Growers' Association, in session in Ottawa, January 15, 1920, go on record as being opposed to any further increases in the charges for a heated refrigerator-car service under rules and conditions now effective; further, that this association strongly recommends that application be made to the Board of Railway Commissioners for an order requiring the railways to provide a carriers' protective service under which the railways assume liability for loss due to freezing or from artificial overheating not the direct result of negligence of the shipper, and that the railways be permitted to impose a reasonable charge for this service in addition to the regular freight charges; and further that a copy of this resolution be filed with the Board of Railway Commissioners. Carried unanimously.”

As to the question of increased remuneration, Mr. McIntosh did not take exception to the increase in cost. At p. 133 of the evidence, vol. 321, he stated: “I think under the present cost of operating that they are entitled to more money for their heated car service;” and at p. 134 he stated: “I do not think there is anything to be gained by keeping the railway companies from a charge they are entitled to for the remainder of the season.” He coupled with this, however, the position that the railway should accept the liability of a full insurer. Further statements were submitted by him as bearing upon the inadequacy and defects of the service rendered, it being stated by him, on behalf of some of his clients, that certain vegetables were damaged in transit from excessive heat while others were damaged by frost. The question of the service rendered and the obligations of the railway in connection therewith, as distinct from the matter of being a full insurer, is something which is not necessarily tied up to the discussion of the rate in question.

In the exchange of opinions which took place at the hearing in regard to the question of the carrier assuming the liability of a full insurer, reference was made to the classification provisions in this respect as tied up to the class rates.

The increase as at present proposed is justified by the railways on the basis of cost and independent of any element of profit. On the basis of the figures submitted the increase asked for does not cover the full cost involved. If a carrier is to be a full insurer, it is obvious that the increase in the heater rate herein proposed cannot make any contribution to an insurance fund out of which the railway would pay such losses as might accrue from this extended liability as a full insurer; and this being so, it further developed in the course of the discussion that there was nothing before the Board as to what rate would properly take care of this liability, nor was Mr. McIntosh, who advanced the proposition, able to make any submission which would be helpful to the Board in arriving at a conclusion in the matter. This is not in criticism of Mr. McIntosh, who was simply advancing a principle and who

had not in his possession the detailed statistics which it would be necessary to have in striking a rate such as would be necessitated by the extended liability he contended for. At the same time, it may be referred to as indicative of some of the difficulties which must be faced.

As was clearly pointed out by the Chief Commissioner at the hearing, this phase of Mr. McIntosh's contention was injecting into the discussion a proposition which had not been discussed; and that if it was the desire of the parties interested to have such matter brought up, then it would have to be dealt with in the regular way.

As already pointed out, the rate of 1 cent per car per mile as applicable in the West was worked out by consent of the parties interested. Where shippers' representatives and representatives of the railways sit down together and work out what appears to them to be a reasonable basis of rate, the agreement so arrived at must be given due weight and not lightly disregarded, as would be the effect if one of the contentions of the Calgary Board of Trade in regard to a reduction of the existing rate were acceded to.

The practice of shippers and railways endeavouring, through conference, to agree upon rate rearrangements and iron out their difficulties is one which is much to be commended. There has been on the whole a very distinct improvement in this respect during the past ten years of the Board's history. The function of the Board is not to make rates in the first instance, but to deal with the apparently irreducible minimum of grievance. At times, a railway has taken the position that because a complaint has been filed with the Board it would be improper for the railway, pending hearing and adjudication, to discuss the matter with the applicant, with the view of arriving at some satisfactory conclusion. It may be emphasized that the Board does not take any exception to such adjustment being worked out.

The rate basis of heater car service in the West was a consent one. There is substantial consent that an increase, subject to the Board's analysis of the figures submitted, is justifiable. An analysis of the figures both East and West justifies the increase asked for.

The increase in the West and the increase in the East and as between the East and the West may go in, subject to the increase in the maximum rates of the groups as provided for in General Order No. 173 being limited to 50 per cent. This point was not developed in the original application as filed, but on being brought to the attention of the railways at the hearing was agreed to.

In view of the extended hearings which have taken place, the Board is justified in authorizing that the increase in rates shall become effective on seven days' notice.

February 28, 1920.

The Chief Commissioner and Commissioner Rutherford concurred.

GENERAL ORDER No. 284.

In the matter of the application of the Canadian Freight Association, on behalf of the railway companies subject to the jurisdiction of the Board, for an order rescinding the General Order of the Board No. 173, dated October 26, 1916, and authorizing the said railway companies to publish and file charges for the use of heated refrigerator cars on the basis of 1½ cents per car per mile, with a minimum charge of \$2 per car, in addition to the regular freight charges.

File No. 18855.11.

MONDAY, the 8th day of March, A.D. 1920.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Toronto, April 13, 1917; Ottawa, April 17, 1917; Regina, June 21, 1917; Vancouver, November 21, 1919; Calgary, November 27, 1919; Edmonton, November 28, 1919; Saskatoon, November 29, 1919; Regina, December 1, 1919; Winnipeg, December 2, 1919; Fort William, December 3, 1919, and Ottawa, January 7, 1920, in the presence of representatives of the Canadian Freight Association, the Canadian Manufacturers' Association, the Boards of Trade of Toronto, Montreal, Winnipeg, Regina, and Calgary, the Ontario Fruit Growers' Association, the Nova Scotia Fruit Growers' Association, the British Columbia Credit and Traffic Association, the Nova Scotia Shipping Association, the Western Canada Fruit Jobbers' Association, the Ontario Vegetable Growers' Association, the Niagara Peninsula Fruit Growers' Association, the Quebec Department of Agriculture, the Canadian Pacific and Grand Trunk railway companies, the Canadian National Railways, and the Central Michigan Railroad Company, and what was alleged; and upon reading the further written submissions filed,—

It is ordered: That the said General Order No. 173, dated October 26, 1916, be, and it is hereby, amended to permit increases in the existing charges for heating refrigerator cars by the carriers, in addition to the freight rates pertaining to the loadings thereof, and also in addition to the charges, if any, for the use of the said cars, as follows:—

(a) Between points west of and including Port Arthur, Ont.; also between points east of and including Westfort, Ont., from 1 cent per car per mile, subject to a minimum total charge of \$2 per car, to not more than 1½ cent per car per mile, subject to a minimum total charge of not more than \$2 per car.

(b) From points east of Port Arthur to points west of Westfort, and from points west of Westfort to points east of Port Arthur, the maximum charges authorized by the said General Order No. 173, when increased not more than 50 per cent, to apply.

And it is also ordered: That the tariffs to give effect to this order may be published and filed not less than seven days previously to the date, or dates, on which they are intended to come into force.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER NO. 29401.

In the matter of the application of the city of St. Boniface, in the province of Manitoba, hereinafter called the "applicant," under section 256 of the Railway Act, 1919, for authority to construct Rue Messier across the track of the Canadian Pacific Railway Company's Emerson Branch, as shown on the plan and profile on file with the Board under file No. 16028.

And in the matter of the application of the applicant for an order directing the Canadian Pacific Railway Company to remove immediately any and all lines of railway improperly, illegally, and without due and lawful authority laid by the said railway company, or any person or corporation on its behalf, on or near Rue Messier, in the said city, either on the property of the railway company or on the property of the applicant, or of any other person or corporation.

File No. 16028.

FRIDAY, the 20th day of February, A.D. 1920.

HON. F. B. CARVEL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Winnipeg, December 2, 1919, in the presence of counsel for the applicant, the Western Wheel and Foundry Company, and the North West Grain Dealers' Association, and what was alleged, counsel for the applicant withdrawing the application for the removal of the said tracks; and upon reading the report of an Engineer of the Board, concurred in by its Chief Engineer,—

It is ordered as follows:—

1. That the applicant be, and it is hereby, authorized at its own expense, to construct and maintain Rue Messier across the Canadian Pacific Railway (Emerson Branch), in the city of St. Boniface, province of Manitoba, as shown on the plan and profile on file with the Board under the said file No. 16028; the crossing to be constructed in accordance with "The Standard Regulations of the Board Affecting Highway Crossings, as amended May 4, 1910."

2. That the switch at present installed in the middle of the proposed crossing be taken off the street; the lead to be moved southwest of the proposed crossing; and, in addition, the longer track running southwesterly past the plant of the Western Wheel and Foundry Company to run off from the rearranged lead to the said plant, instead of having a separate crossing as at present,—all as shown on the plan marked "A" on file with the Board under file No. 16028; the rearrangement of such tracks and switch to be done at the expense of the Western Wheel and Foundry Company.

3. That the proposed crossing be protected by a watchman between the hours of 7.30 a.m. and 5 p.m., daily, the wages of such watchman to be borne and paid by the applicant; and that the cost of any further protection which may be found necessary at the said crossing from time to time be borne and paid by the applicant.

S. J. McLEAN,
Assistant Chief Commissioner.

GENERAL ORDER NO. 283.

In the matter of Track Scale Allowances; also of "Tolerance."

File No. 8799.1.

TUESDAY, the 24th day of February, 1920.

HON. F. B. CARVEL, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*A. S. GOODEVE, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, March 18, 1913, Vancouver, May 19, 1913, Calgary, May 26, 1913, Edmonton, May 27, 1913, Regina, May 29, 1913, Winnipeg, May 30, 1913, and Fort William, June 4, 1913, the Canadian Pacific, Grand Trunk, Grand Trunk Pacific, Canadian Northern, Canadian Northern Quebec, and Ottawa and New York Railway Companies, the Canadian Freight Association, the Canadian Manufacturers' Association, the Canadian Lumbermen's Association, the Boards of Trade of Montreal, Toronto, Edmonton, Winnipeg, and Regina, the British Columbia Lumber and Shingle Manufacturers, and the Massey-Harris Company, Limited, being represented at the hearings, and what was alleged; and upon reading the further written submissions filed;—

It is ordered: With respect to freight traffic referred to herein, carried between points in Canada, that railway companies subject to the jurisdiction of the Board publish and file tariffs to provide for the following allowances per car from the ascertained gross weights of loaded cars; subject to the conditions that the said allowances shall not operate to reduce the net weights of the loadings of the cars below the minimum carload weights provided for in the tariffs applicable thereto:

1. For temporary or permanent racks on flat or gondola cars loaded with bark, provided the weight of the racks is not included in the stencilled tare of the car 1,000 pounds.

2. For temporary protectives as follows, namely:—

(a) Blockage, dunnage, or temporary racks, in connection with carload shipments of agricultural implements, machinery, stoves, acid in carboys, and vehicles of all descriptions Actual weight, but not more than 650 pounds; the shipper to certify to the weight of the said protectives on the shipping order and bill of lading.

(b) Temporary racks, stakes, standards, strips, braces, or supports in connection with carload shipments of commodities, other than those specified above, requiring such provision for safe transportation when loaded on flat or gondola cars Actual weight when ascertainable, but not more than 500 pounds; the shipper to certify to his ascertained weight of the said protectives on the shipping order and bill of lading.

3. For lumber used by shippers in lining box (not refrigerator) or stock cars for shipments of perishable freight Actual weight, but not more than 800 feet, board measure, at $2\frac{1}{2}$ pounds per foot; the shipper to certify to the measurement of the lumber so used on the shipping order and bill of lading. Also, a further allowance of the actual weight, but not exceeding 500 pounds, of the stove and fuel, if furnished by the shipper.

4. For foreign matter not part of the lading, such as snow, ice, manure, or refuse, in or on cars at the time of weighing . . . An estimated allowance adequate to the actual conditions in each case.

And it is also Ordered: That, irrespective of the aforesaid allowances, the tariffs of the said railway companies include the following definition and directions, namely:—

For “tolerance,” that is to say, variations in weights disclosed in check-weighing or re-weighing passed without alteration of the billed weight:—

(a) On ashes, brick, cinders, clay, drain tile (soft), dolomite, ganister, gravel, mill-scale, ore, sand, slag, stone (all kinds except “cut”), and other similar bulk freight, loaded on flat or open-top cars . . . One per cent of the weight of the lading, but not less than 1,000 pounds per car.

(b) On all other freight (including coal and coke) the weight of which is not subject to change from its inherent nature . . . One per cent of the weight of the lading, but not less than 500 pounds per car.

F. B. CARVELL,
Chief Commissioner.

ORDER NO. 29407.

In the matter of the complaints of the city of Toronto; residents of Oakville and stations between Oakville and Toronto; residents of Laval des Rapides, Que., Gatineau Residents Association; E. N. Brown of Montreal, Que., the town of Weston, Ontario; and residents of the town of Lasalle, Que., against the proposed increase in commutation rates published by the railway companies to become effective March 1, 1920.

File Nos. 29984, 29984.1, 29984.2, 29984.3, 29984.4, 29984.5, 29984.6, and 29984.7.

FRIDAY, the 27th day of February, A.D. 1920.

HON. F. B. CARVELL, *K.C., Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

HON. W. B. NANTEL, *K.C., Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, *K.C., Commissioner.*

Upon hearing the complaint of the residents of the town of Lasalle at the sittings of the Board held in Montreal, February 25, 1920, the town of Lasalle and the railway companies interested being represented at the hearing, and what was alleged and upon reading the submissions filed on behalf of the other parties interested—

It is ordered: That the following tariffs, namely—

Canadian Pacific Railway Company's Tariffs, C.R.C. Nos. 139, 140 and 145.
Grand Trunk Railway Company's Tariff, C.R.C. No. E-2822.

Canadian National Railway's Tariffs, C.R.C. No. W-90 and No. E-114.,
Toronto, Hamilton and Buffalo Railway Company's Tariffs, C.R.C. Nos. 1279, 1281, 1284.

New York Central Railroad Company's Supplement No. 4 to Tariff C.R.C.
No. 9.

Central Vermont Railway Company's Supplement No. 1 to Tariff C.R.C.
No. 525.

be, and they are hereby, suspended, pending a hearing by the Board.

(Signed) F. B. CARVELL,
Chief Commissioner.

ORDER No. 29418.

In the matter of the application of Alfred S. Yarwood, of Shanawan, Manitoba, for an Order directing the Canadian Pacific Railway Company to appoint a permanent station agent at Shanawan. (Domain Station.)

File No. 26824.

FRIDAY, the 27th day of February, A.D. 1920.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Whereas, on account of the increase in business the temporary agent appointed at Domain Station for the months of September, October, November and December in each year, as required by the Order of the Board No. 26137, dated May 22, 1917, did not meet the requirements; and upon the railway company's undertaking to appoint a permanent agent at Domain, filed,—

It is ordered: That the said Order No. 26137, dated May 22, 1917, be, and it is hereby, rescinded.

F. B. CARVELL,
Chief Commissioner.

CIRCULAR No. 188.

File No. 8654. Procedure by Board as to Service.

In correspondence with the Board, various railway companies contend that there would be a saving of time in handling complaints if, in cases where complaints are forwarded to the Board and the Board assumes the burden of making service thereof, the complaints were taken up with the legal department of the railway instead of being handled through the local agent in Ottawa.

The Board desires each railway company to intimate the practice which it prefers to have carried out in this respect.

After the written submissions have been considered, the modifications, if any, which may be introduced by the Board in respect of service of complaints will in no way supersede the provisions of section 55 of the Railway Act and in particular will not modify the obligation provided for in subsection 2 of section 55 as to the maintenance of an agency book in the office of the secretary, said book to contain the information as provided for in the subsection.

By order of the Board.

A. D. CARTWRIGHT,
Secretary.

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Judgments, Orders, Regulations and Rulings.
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